A CONSTITUTIONAL HISTORY OF INDIA

(1765 to 1948)

BY

SRI RAM SHARMA,

Principal, D. A. V. College, Sholapur

KARNATAK PUBLISHING HOUSE, BOMBAY 4

ALL RIGHTS RESERVED

FIRST IMPRESSION 1949

Cp. 4.

GOVT. GIRLS COLLEGE
SRINAGAR
ACC. NO 2488
LIBRARY

S.23.C.H.

Printed by B. G. DHAWALE, at the Karnatak Printing Press, 103, Sion (East), Bombay 22, and published by him for the Karnatak Publishing House, Shri Samarth Sadan, Benham Hall Lane, Girgaon, Bombay 4.

INTRODUCTION

The following pages make an attempt at tracing the constitutional development of India during the last two centuries. I have tried to tell this story as a chapter in the history of India rather than a chapter in the development of the colonial policy of Great Britain. Emphasis has, therefore, been placed on what actually happened in India during this period rather than on cataloguing the British Statutes concerning India passed during this period. I have brought the story to 1948 by including a chapter on the new (proposed) constitution of India.

I have tried—however inadequately—to trace the constitutional development of India so as to interest the general reader as well as professional students of history in the subject.

I am grateful to my students, past and present, who made the writing of this book possible by their interest in its subject matter. My colleagues, Professor S. Krishnamurti and Prof. G. N. Sarma read the typescript and proofs of the book. I owe them my thanks for their suggestions for the improvement of the book.

I have added a chronological summary at the end of the volume. I hope it will prove useful to general readers and University students alike.

Dayanand Anglo-Vedic College,
Sholapur.

SRI RAM SHARMA

TABLE OF CONTENTS

CHAPTER		PAGE
1.	The British in India	1
2.	East India Company as an uncontrolled Political Instrument	7
3.	The Regulating Act	12
4.	Parliamentary Control of Indian Affairs	23
5.	Emergence of an Administrative Machinery ..	32
6.	Administrative Reforms	43
7.	Centralization of Indian Administration	47
8.	Indian Administration on the Eve of the Mutiny ..	56
9.	Transfer to the Crown	68
10.	Secretary of State in Council	76
11.	Governor-General in Council, 1858-1919	83
12.	Indian Councils Acts of 1861 and 1892	96
13.	The New Judiciary	107
14.	Administrative Services	114
15.	Morley-Minto Reforms	120
16.	On the Road to Parliamentary Government ..	130
17.	Dyarchy in Operation	152
18.	Administrative and Constitutional Reforms ..	172
19.	Demand for Further Reforms	187
20.	Government of India Act, 1935	193
21.	Provincial Autonomy in India	198
22.	Provincial Legislatures since 1937	206
23.	Central Government from 1921 to 1947	217
24.	Partition and Independence	224
25.	The Dominion of India	232

26. Federal Court 237
27. The Judicial System 244
28. District Administration 247
29. Local Self-Government 252
30. Political Parties 260
31. The New Constitution of India 271
Bibliography 287
Chronological Summary 289

CHAPTER I

THE BRITISH IN INDIA

The European quest for much needed spices led to the opening of the East Indies to the Portuguese in the fifteenth century. The Pope confirmed the Portuguese claim to the exclusive exploitation of the eastern trade. The Reformation provided the Protestant countries of Europe the requisite excuse to take a share in the Portuguese gains. In 1600 Queen Elizabeth granted the monopoly of trade in the East to some London merchants. In the twenties of the seventeenth century the English were accepted in India as co-sharers in India's trade with the West. Warehouses, offices, agencies and houses then sprang up in various parts of India—mostly in port towns—as the visible symbols of England's eastern trade. Early in the eighteenth century the traders became finally established as a joint-stock company enjoying the English monopoly of trade with the East.

In England the shareholders of the Company met in a "Court of Proprietors." Every year they elected a Board of Directors to conduct the day to day affairs of the Company. Both the Court and the Board met under a chairman who was the chief executive officer of the company. As in most business concerns, the registers of the company remained open till the last moment before the annual meeting for recording the sales and transfers of the shares. Every shareholder, irrespective of the number of shares he held, had only one vote. This democratic provision ill suited business. The holders of a large number of shares used to distribute them temporarily at the time of the annual elections among their loyal dependants in order to command their votes.

In India the Company needed an organization to conduct its commercial affairs as also to represent its interests at the Mughal court. Sir Thomas Roe was the only ambassador accredited by an English King to the Indian government. The experiment was not repeated. There were no trade consuls either to look after English commercial interests. The servants of the East India Company in India therefore had to protect its interests against local officials as well as European competitors. English agencies—" factories " as they were called in contemporary English—in India therefore soon developed an appropriate organization for their work. They were run by local ' factors '—managers as we should call them to-day. These ' factors ' were organized under a regional ' President and Council. ' Soon there were three such Presidents and Councils. They sat as judicial courts in dealing with their servants. The Mughals extended to these foreigners the privilege which they had granted to all non-Muslim groups in India to conduct their personal relations through their panchayats. But the Mughal authority was always there. The exercise of some judicial functions did not exalt these ' presidencies ' into administrations. The English were as much subject to the Mughal authorities as any other group of people living in India.

The East India Company became the ruler of Bombay when Charles II made it over to them. Here they issued coins which were assayed and accepted at their bullion value in Indian markets. They raised a little ' army ' of 2,000 for its defence against European enemies and pirates. As a security measure against local turbulence, forts were raised in Bombay, Madras and Calcutta where the English could pursue their commercial activities undisturbed.

By 1720 the Mughal empire became extinct. Though a descendant of Akbar usually living in Delhi continued to be styled " Emperor " by interested parties for long, the empire had come to an end. When Muhammad Shah acknowledged

the right of the Maratha Peshwas to appropriate a part of the revenues of the entire south in 1726, he nominated the Marathas as his imperial successor not only in the south but, by implication, in the north as well. The Marathas lived up to this status. It was they who marched out to defend India against Ahmed Shah Abdali at the battle-field of Panipat in the Punjab in 1761. It was from them that the British secured the person of the blinded and helpless 'emperor', Shah Alam, in Delhi in 1803. Indeed, wherever the Mughal authority began to be disputed, the Marathas preferred their claims to sovereign authority, if not to actual rule. At the height of their power they controlled Delhi, the whole of Rajputana, Gujarat, Orissa, Central India and Maharashtra.

But the decadence of one empire and the emergence of another in its place is never a peaceful and much less an orderly process. In India there was the added difficulty of the presence of a large number of princes and princelings varying in their authority, on the one hand ready to throw off control of the centre the moment its grip was released, yet on the other hand willing enough to accept a subordinate position should a strong power—central or neighbouring—promise them immunity from other outside interference. The repudiation of the Mughal authority in various parts of India made the founders of new provincial dynasties anxious to secure the help of mercenary bands willing to serve them. Lack of any rule of succession in Muslim law further added to the confusion. The death of a ruler became a signal for struggle among all his likely successors.

The long duel between England and France in the eighteenth century led to the presence of English and French naval forces in Indian waters thus increasing the fighting strength of the English and the French. The French began to train their Indian soldiers in European modes of warfare. Even under the Mughals the artillery had been a European preserve. The

French-trained Indian musketeers made very good soldiers. The English followed the French in this venture.

The English had built up a prosperous trade in India. The French had not. The French under Dupleix tried to better their fortunes by resort to diplomacy and war. When the War of Austrian Succession broke out in Europe, the English and the French tried to fight it out in their settlements in India as well. The Nawab of Bengal told them sharply that he cared not for their quarrels elsewhere and would have them behave as peaceful and law abiding citizens. The Nawab of Arcot's cupidity was aroused when the French promised to conquer Madras and present it to him. The combined land and sea forces of the French took Madras but refused to hand it over to the Nawab of Arcot. When the Arcot forces, ten times the French contingent, were routed by Dupleix in the battle of Saint Thomas the hollowness of the Indian fighting machine lay exposed. The French forces were soon in demand at Hyderabad and Arcot to settle quarrels over succession. The English placed their forces at the disposal of the rival candidate. This 'undeclared' war ultimately eliminated the French as a factor in Indian politics. A war of succession and subsequent intrigues in Bengal enabled the English to take part in a revolution that aimed at placing the commander-in-chief of the army in place of the Nawab. Its success opened the way to an Indian *El Dorado* for the servants of the East India Company. But Plassey did not open the way to an empire in India to the English. Its political effects were almost *nil*.

The battle of Buxar was not inevitable ; nor was the English success therein a foregone conclusion. The "Diwani"—the right of collecting taxes which the British claimed to have acquired from the 'emperor' in the subsequent treaty—was not worth the paper on which it was written. But the East India Company displaced the only lawful authority in

Bengal in 1765. It did not know what to do in its absence. It dared not assume sovereign authority in Bengal, Bihar and Orissa. The fiction of Diwani was invented to hoodwink the British public, the European competitors of the company in India and Indian rulers.

The 'Diwani' is the key to the development of the British Indian Constitution. The East India Company tried to administer Bengal using the existing machinery of government—as its servants misunderstood it—for extracting as much profit out of the three provinces as they could. The shareholders claimed a preposterous dividend, the British taxpayer demanded relief at the cost of the Indian peasant. While these claims were speeding the company to insolvency, the servants of the East India Company in Bengal made more money than they knew what to do with. The only 'administration' the British in Bengal practised in these early years lay in graft and extortion. Seven years that found the company being impoverished progressively and its servants flourishing exceedingly at last roused the British Government to an effort in the direction of doing something for introducing some order in the affairs of the Company in India.

CHAPTER II

THE EAST INDIA COMPANY AS AN UNCONTROLLED POLITICAL INSTRUMENT

The East India Company was a body of merchants trading with the East, India, East Indies and China. In the eighteenth century, it had been transformed into a united group of the original London Company and its later rival the English Company. In England all the shareholders holding shares worth £500 met annually in the "court of proprietors" to elect 24 directors who held office for a year. The directors had to possess shares worth £ 2000 in their own name. The Indian 'Nawabs'—as the servants of the Company who went back to England with inflated purses were called—had been attempting to capture the directorate. Clive very nearly succeeded in doing so. The directors elected for a short term as business-men served the Company's business interest successfully. They supervised the trade operations of the Company, hired ships for the various voyages, decided what to send to India and the East and gave general directions as to the commodities to be bought in and shipped from the East. They nominated all the executive officers of the Company, they recruited the clerical staff needed for its operations and determined the conditions of their service in India. They granted the Company's commissions to military officers in India, they authorized their senior servants to act as justices of the peace and otherwise exercise powers of local government and administration in their settlements. When the Company began to maintain small forces of its own for the defence of their settlements, the Court of Directors was authorized in 1754 to empower the Presidents and Councils to assemble and hold Courts Martial to try military offenders.

The sole business of the Company's servants in the East was commerce.

In India, Bombay, Bengal and Madras were at this time organized into three independent Presidencies, each under a President and Council. The President was but one of the members of the council who took the chair when the council met. The Company's authority was exercised by the council as a collegiate body where the voice of the majority prevailed. The President however exercised in practice a good deal of authority. Many of the members of the council were scattered all over the region as the local representatives of the Company. They felt little inclination to make the arduous journey which the attendance at council meetings involved and even less to meddle with the work of supervising and accounting which went on at the headquarters of the Company. The Presidents represented the Company at the courts of the various Indian rulers with whom they had dealings. The President and Council supervised the work of the factories by calling for returns and otherwise carrying on correspondence on all questions which needed their attention.

The Company's servants were divided into several grades, writers, factors, senior factors and merchants. Most of them started their careers as writers and got promoted in course of time to higher grades. They came from the mercantile classes in English society which sent out its 'ne'er-do-wells' to India. The salaries granted to the Company's servants were ridiculously small, but they made up for that by drawing allowances of all types and accepting 'considerations' for doing their work. The prevalent standards of 'public service' even in contemporary England were not very high, they could be no higher in India. The Company's servants were moreover merchants who were making money for their masters and thought it legitimate to do so occasionally for themselves.

Besides its legitimate commercial activities in India, the Company was given authority from time to time to function as a quasi-political authority in relation to its own servants in the East. The original charter of 1600 empowered the London merchants to make rules and regulations presumably for carrying out their functions. In 1726 the Presidents and Councils in India were given the power of making laws, subject to the Directors' approval. Laws thus made continued to be called 'rules and regulations.' They were illegal if they conflicted with English laws and customs. The existing 'English law' was also made applicable to Englishmen in India and to such Indians as submitted to it. Laws made in England after 1726 were to be applicable in India only if Parliament expressly said so. In the island of Bombay the Company was granted full sovereign powers in 1668. The Board of Directors made laws for Bombay which were promulgated there in 1670.

From the very outset of its career in India, the Company had been given authority to hold courts in India. Its servants in the East exercised this right on its behalf. It had been added to, modified and defined from time to time. In 1726 the mayor and the aldermen at Bombay, Madras and Calcutta constituted civil courts for the Company's European servants in India. Appeal lay from their decisions to the President and Council and finally to the King in Council, where the value of the suit exceeded Rs. 3000. These courts admitted wills and granted probates. To deal with criminal cases the Presidents and Councils were exalted into 'Justices of the peace and commissioners of oyer and terminer and jail delivery.' As such they met every quarter to deal with petty offences and determined such other cases as were brought before them. No use was made of juries. The authority of the courts was confined to factory towns alone. Till 1765 the Europeans outside factory towns in Bengal were liable to be tried in the Nawab's Court, but after the British victory at Buxar this became impossible. The English servants

of the Company outside factory towns could be sued now only in England. The immunity of the servants of the Company from the jurisdiction of the Nawab's court was soon extended to their Indian agents and servants and produced complete judicial anarchy in the three provinces.

The Company maintained a small corps of sepoys acting as messengers, bearers, orderlies and watchmen. Some European soldiers also had been recruited from time to time. In 1748 a small force of Indian soldiers was raised at Madras. The constant wars between the English and the French in India which began about this time led to the increase of the Company's European forces in India. An Act was passed in 1754 which gave the Company's Presidents and Councils and the Commander-in-chief, the right to set up courts martial to deal with military offences. The British Government could make special 'articles of war' for maintaining order in the Company's forces. An appeal against the decision of the local courts martial lay to the King's Court in England.

Early in its career the Company had been given the right to make war on the enemies of the Company or the King. Naturally the right to make peace on suitable terms followed. In 1757 the loss of Calcutta led to the grant of a comprehensive Charter which allowed the Company to retain booty captured in defensive military operation by its own forces. When royal forces were also employed, the Crown would fix the shares due to the Company and the Crown. The Company was also given the right to cede, restore or dispose of any territory acquired from Indian princes.

For fear of exciting the jealousy of its European rivals in India and the wrath of the English critics of its monopoly and political power, the Company entered into spurious relations with some of the Indian princes in order to conceal its gains. At Surat it was a tenant of the Nawab of Surat. Its position here was like that of any other great mercantile firm. The

same was true of the rest of the inland places where the Company maintained its agencies and offices. At Madras and Calcutta it had at first been a landlord of a sort paying rent for the lands which it had acquired from the local rulers. In 1757 its Zamindari of Calcutta was extended to include the twenty four paraganas which it held under a Jagirdar, Clive. It further became the military saviour of its own sovereign, the Nawab of Bengal. In 1765. it first restored the dying Mir Jaffar to the throne of Bengal and after his death picked out a Nawab who was so surprised and so glad to be on the throne that he was willing enough to brook all restraints on the exercise of his power. The Company's servants in India were neither eager nor prepared for the discharge of administrative functions. Their interest was confined to getting rich quickly by exercising patronage without responsibility. They made money by selecting a new Nawab when their recent nominee died. Their success at Buxar surprised them and they did not know what to do with it. Clive camouflaged the gains of the East India Company by inventing the fiction of an independent Diwani of Bengal granted by a pretender to the Imperial throne who had no place even to hide his head in and no revenue to support himself. The East India Company was not equipped to discharge even the limited functions of the Diwani. These were performed at first by their Indian deputies who were handsomely paid for taking the entire job off the Company's hands. Later on British collectors were appointed to supervise the collection of revenues by Indian contractors. Meanwhile the Company exploited the profitable monopoly in internal trade in salt. The pseudo Nawab discharged such functions as the Company's servants left to him. These were exercised by an Indian deputy whom the Nawab appointed with the approval of the Company. It was a period of multiple authorities creating such disorder and confusion as had been seldom seen. The position was even worse in Carnatic and the ceded dis-

tricts of the Northern Sirkars. The Company held the Northern Sirkars as Zamindars under the Nizam of Hyderabad. The grant was confirmed by a Firman which the English made Shah Alam sign after the battle of Buxar. The Company paid Rs. 9,000 a year as rent for the district. In Carnatic they were the defenders of the Nawab who could keep himself on the throne only with their help. The Company assumed no responsibilities here formally, not even those of defence. But the Nawab knew his limitations. The Nawab had granted the districts round Madras to the East India Company who leased them back to the Nawab. Here again it is difficult to hold that their contact with Carnatic assured better government there. The local machinery of administration was thrown out of gear, and all incentives to good government were removed because the Nawab could hope to get the help of the East India Company in case of aggression from outside or trouble from within. The Nawab had the advantage of being the paymaster of most of the company's servants in Madras as they had advanced moneys to him on preposterous rates of interest.

The salaries of the Company's servants were very low. But they had many opportunities of making money by private trade, money-lending and extorting bribes and presents for their good will. Naturally most of them preferred making money in forbidden ways to serving the interests of the Company.

CHAPTER III

THE REGULATING ACT

The Company's acquisition of political power in some parts of India was not looked upon with favour in England. It bribed the British people into acquiesence by promising to pay a handsome amount every year to the British treasury. The share-holders were appeased by raising the dividend to at least 10% But the acquisition of political power soon failed to prove the gold mine it had promised to be. The Company was in financial difficulties. It needed money. To raise it in the open market would have proved burdensome. The only other alternative was to approach the British Government to make an advance to the Company at a reasonable rate of interest. When the request for a loan was made, the British Government used the opportunity to regulate the exercise of political power by the Company. The Regulating Act passed in 1773 allowed the Compay to exercise for twenty years such political authority as it had already been exercising in Bengal. It further laid down the broad principles regulating the exercise of this power.

The Company was to carry on its administrative functions under the supervision of the British Government. The laws—rules and regulations made in India by the Company's agents—were subject to disapproval by the Crown signified within two years of their promulgation. The Company was to keep the government in England fully informed of its civil, military and financial activities by submitting regular returns of revenue and occasional reports. But above all, the Company's entire government in Bengal was to be subject to a judicial scrutiny on the spot by a royal court consisting of one chief justice and three judges. All the public servants of the Company were made

amenable to its authority for every official act of theirs. All the subjects of the Company in Bengal, European and Indian, could seek redress in the Supreme Court against oppression by the Company. Of course, It was not [illegible] General and the Council of Bengal in the Governor-General its orders, nor could they be [illegible] work was not distrib[illegible] could determine all types of cases and grant [illegible]ion on all [illegible] all the methods then prevalent in English judicial procedure. It was a Court of Equity and of Common Law, a Court of Admiralty. and an Ecclesiastical Court. It heard appeals against the decision of justices of the peace in Calcutta—the Governor-General, members of the Council and single judges of the Supreme Court.

The Supreme Court also registered and published the rules and regulations made by the Governor General and Council of Bengal. The Act probably intended that in doing so it should pronounce upon the legality or otherwise of the rules submitted by securing that the rules and regulations so made were not repugnant to the laws and customs of England. This power was seldom exercised and was brought to an end in 1781 when the Declaratory Act granted power to the Governor-General and Council of Bengal to make laws without submitting them to the Supreme Court for registration.

In place of the Mayor's Courts set up in 1726 and revived in 1758, the Supreme Court assumed the trial of all serious offences committed in Calcutta and the British factories. Offences committed by the British subjects of the Crown anywhere in Bengal, Bihar and Orissa were also investigated and decided by it. The Governor-General and Council continued to be justices of the peace authorised to hold petty and quarter sessions. As the judges of the Supreme Court now exercised these functions, the former did not in actual practice hear and determine many cases. The Court was given jurisdiction to hear and determine cases by British subjects against Indians where the parties had contracted beforehand to abide by its decision and

when the value of the suit was more than Rs. 500. Appeals lay from the court to the King-in-Council in England.

Thus the Regulating Act made a serious inroad into the authority which the Presidents had hitherto exercised. It made independent Calcutta in cases between British subjects and the concentration of political power in the Company's servants anywhere in Bengal, with Bihar and Orissa. The British Government assumed that it had thus taken a very effective step for preventing oppression by the Company's servants in Bengal thus securing good government in the newly acquired provinces.

Following the British custom, the Court heard cases with the help of a jury of British subjects. It was empowered to appoint its own officers whose salaries were subject to approval by the Governor-General and Council. It was an English Court and therefore it dispensed justice according to English law and equity. It could hear appeals from the courts of the quarter sessions and where the parties had agreed to abide by its decision from the provincial courts as well.

The Act appointed Warren Hastings as the first Governor-General. He was an old servant of the Company, then Governor of Bengal. But to secure that the government would not now continue on the old lines, three of the four members of the council were unconnected with the Company. They were appointed on the assumption that the Company's servants had lamentably failed in carrying on public administration even according to the low standards of public conduct than prevalent in England. Their appointment was certainly a slur on the way in which the Company's servants had discharged administrative functions in India. Hastings and Barwell were to provide the necessary knowledge of local conditions. But the new Government of Bengal was collegiate, the Governor-General and four members of the Council were to decide all questions by a majority of votes. The Governor-General presided over their deliberations, no doubt, but as the total strength of the council was five, he

could not exercise even a casting vote in the full council. It was only when one member was temporarily absent that he could use a casting vote. But if two members were absent he could not again use his casting vote. It was not intended to lodge any executive authority in the Governor-General alone. The administrative work was not distributed into departments, the council was in session on all days of the week. Neither any opportunity nor any excuse was left for the exercise by the Governor-General of any administrative authority on his own. Three members of the council formed a quorum.

In the characteristic British fashion no attempt was made to define the powers which this executive was to exercise. They were to succeed to all the powers—civil and military—which the Company's servants had lawfully exercised in Bengal when the Act was passed. Most of these functions derived their authority from treaties with the Indian princes. The Act left the actual manner of exercise of these functions to the Company's comprehension or usually miscomprehension of the way in which Indian administrative institutions had been functioning in Bengal.

The Governor-General and members appointed in 1773 were to hold office for five years but could be sooner removed by the British Government if it cared to accept a recommendation for removal made by the Board of Directors. If the office of the Governor-General became vacant before the expiry of his term, the senior member of the Council was to fill it automatically. Casual vacancies among the members of the council were to be filled by the Directors with the approval of the Crown for the first five years. This implied that if a vacancy occurred it would not be filled for at least a year. The mutilated council however could discharge all its functions fully. After five years the Company was to resume the power of making all appointments by its own authority.

Though nothing was done to revise the scale of salaries

of the servants of the Company, the salaries of the Governor-General and Council were fixed at a lavish scale, £25,000 for the Governor-General, £10,000 for the members of the council. All extra sources of income were, however, stopped; no presents were to be extorted or accepted and no moneys made by illicit private trade. The Governor-General, members of the council and the judges of the Supreme Court could be tried in England in the King's Court for anything done by them in India.

The Governor-General and Council were given the power of making rules and regulations for Calcutta and other possessions of the Company. Rules thus made were to be reasonable, just, and not repugnant to the laws of the realm. They were sent to the Supreme Court and were subject to its disapproval on these three specific grounds. It registered these rules, regulations and ordinances within a fortnight of their receipt. The Crown could disallow these laws within two years of their promulgation. Such annulment however did not affect the cases tried while the rules were laws of the land.

The Regulating Act left the public administration in Bengal severely alone. It, however, laid down one fundamental principle of honest administration. No servant of the company was to accept a gift or a present nor were its judges or collectors of revenue to engage in trade or commerce on their own account.

The head of the administration in Bengal was distinguished from his colleagues by being styled Governor-General. The Government of Bengal was made the supreme authority in India in matters of peace, war and diplomacy. The governments of Bombay and Madras could not begin hostilities, conduct negotiations and conclude peace with other political powers in India without the express approval of the Government of Bengal. But Bombay and Madras could begin hostilities when their territories were actually invaded or

potentially threatened. Further they continued enjoying the right of corresponding with the Board of Directors even in matters concerning peace and war. Naturally when they were authorized to wage a war by Directors, the Government of Bengal could not prevent them from doing so. Thus in actual practice it was soon found that Bombay and Madras could pursue their own way, some times throwing the burden of paying for their policy on Bengal which was the richest Presidency.

The Governor-General and Council were to obey all the orders of the Board of Directors. In order to enable the Board to deal satisfactorily with administrative problems, the number of its members was fixed at 24 and their tenure extended to four years. They were now to be elected only by the share-holders who possessed shares worth at least £1,000 a year before the date of election. This made control of the Court by large buying and selling of the shares just before the election impossible and thus prevented 'snap' elections. Shareholders worth £3,000 were given two votes and those worth £5,000 three. In order to make the Board a continuous body better fitted to discharge administrative functions, only one fourth of its members were to be elected every year. The Directors vacating office were not to offer themselves for election for a year after retiring. These changes did not alter the character of the Board as much as had been expected but they made it possible for the administrators in India to address their communications to the Board without trimming their despatch-es with a view to making them acceptable to a particular set of directors.

In this way the Regulating Act made a bold attempt at securing good government in the Company's territory in India without the Crown's directly assuming the responsibility for the same. It was the first measure by which a European govern-ment assumed the responsibility for governing territories

acquired by it outside Europe and inhabited by civilized people. No other European nation had so far made any such attempt. For the English as well, it was the first measure of its kind. The Act was passed at a time when controversy in colonial America was about to flare up into the War of American Independence. The British political philosophy at the time was dominated by Adam Smith's *Wealth of Nations* on the one hand and the struggle between George III and the Whigs on the other. The Act bore the impress of all these stresses and strains. Its most praiseworthy feature was the setting up of the Supreme Court as a guarantor of good government in Bengal for all. It introduced the thin end of the wedge of direct administration by the Crown by insisting on securing timely information from the Company about its affairs in India. It reorganized the Board of Directors for another 60 years in India ; it translated the Directors' demand for honest administrators in India into a Parliamentary mandate when it prohibited private trade and acceptance of gifts by the Company's public servants. Its principle of collegiate authority in the Governor-General and Council of Bengal remained substantially unmodified till 1861. It made an amateurish attempt at setting up one supreme authority for the Company's dominions in India.

As the first Act aiming to regulate the exercise of political power by the East India Company in India, it trod an unbeaten path. No wonder that as experience was gained the need for modifying its provisions arose in order to get over the difficulties encountered in its operation. These centred round two main problems. The first concerned the status of the Supreme Court and its functions. Following the English model, the highest dignitaries in Bengal had been made subject to its jurisdiction. No one except the King in England was immune from subjection to the ordinary courts of the land. Naturally the Regulating Act had subjected the Governor-

General and Council to the Supreme Court for felonies and treason. When the Supreme Court started to exercise this power, it was asserted by the Indian administrators that by lowering the prestige of the executive, the Court made efficient government almost impossible. The rights of the subjects were sacrificed to supposed administrative needs. The Declaratory Act of 1781 gave up the attempt to provide a speedy means of preventing oppression of Indians by the Company's servants in India. The Governor-General and Council could not thereafter be challenged for their action before the Supreme Court by Indians though they could be so challenged by the British. The Governor-General and Council enjoyed thereafter the same immunity in India as the King did in England. They could be tried for their misdeeds before the King's Bench in England but this was an illusory provision. The subjecting of other public servants to the jurisdiction of the Court soon produced some unexpected results in Bengal. The administration of justice was organized by the Company under its own courts which were not subject to the Supreme Court in the discharge of their judicial functions. The Court resented this denial of its authority and when an ingenious but unsuccessful litigant approached it and brought an action against a judicial officer of the Company, the Court hastened to hear it summoning the officer concerned before it. This created a scandalous state of affairs. Coupled with this came the question of the collectors of land revenue. The Company's servants in Bengal had failed to understand the previous system of collecting land revenue in Bengal. To ease their own burden the Company's government began to auction the right of collecting land revenue to bidders. On an application, the Court held that the farmers of land revenue were public servants of the Company. It decided to enquire into the allegations brought forward against one of them. This jeopardized the Company's extremely defective administration of land revenue. The

Court was guilty of some rash acts in the assertion of its powers even though it had had enough provocation. The Chief Justice committed the unpardonable blunder of accepting a lucrative job from the Company while he was still in the service of the Crown. The Declaratory Act of 1781 placed both the judicial officers of the Company and farmers of revenue in Bengal beyond the jurisdiction of the Supreme Court. The Supreme Court had been guilty of a judicial murder when it had sentenced Maharaja Nand Kumar to death for forgery when the Act under which he was sentenced was not applicable in India. It was now decided that English laws would apply to Indians only when the defendant had contracted to take the case to the Supreme Court under the English law.

We have already noticed that the subordination of Bombay and Madras to Bengal was more fictitious than real. The emergence of a supreme authority in India was desirable; it could only be lodged in the Government of Bengal. It needed a costly, bloody and humiliating war with the Marathas to drive home the necessity of closing all loopholes whereby Bombay and Madras could escape direction from Bengal in war and peace. The collegiate nature of the Government of Bengal has been much criticised as also the position of the Governor-General. The collegiate organization of the supreme and and provincial governments in India remained intact till 1861. A constitutional device which stood for almost a century needs no defence. The position of the Governor-General in the government was exalted in 1793 when he was given the right to override the majority of his council in administrative matters. In 1773 nobody would have defended the lodging of supreme authority in a single individual. But the Company and the British government had erred in appointing an old servant of the company, Warren Hastings, as the first Governor-General. Only twice in more than a century and a half of British rule in India was this mistake of appointing a public

servant in the regular employment of the Crown in India to this supreme office repeated. Warren Hastings was not only a servant of the Company, he was a difficult, if not an impossible colleague in office. If he did not suffer from the more common defects of the Company's servants in India, he certainly was intractable. He acted in flagrant violation of the Company's directions, yet he expected his colleagues whom he never took into confidence, to support him. He was several times condemned for his policy in India by the Commons, the Board of Directors and even the Court of Proprietors. The Commons subjected him to the anguish and the humiliation of a costly impeachment after his retirement. The majority of the members of the Council were appointed from English public life who shared with the rest of their compatriots the common belief that all servants of the Company were rogues and knaves. Pitt voiced the contemporary feeling in England when he declared that the Company's administration in India 'stank to heaven.' It was natural that Warren Hastings's colleagues should try to probe into 'this stink.' Warren Hastings took every expression of opinion different from his own as a declaration of personal hostility towards him. If Phillip Francis nursed the ambition to succeed Warren Hastings as Governor-General, the latter clung to office even when he had resigned it. If Francis used Nandkumar as a tool, Warren Hastings converted Impey into one. Eleven years of trouble did not convince either English political opinion or the Company that the Governor-General of Bengal needed greater powers than those exercised—and often exceeded—by Warren Hastings.

The decade after the Regulating Act saw the spectacle of a Governor of Madras imprisoned by his colleagues and dying in prison and two commanders-in-chief dismissed. In Bombay it demonstrated the fact that no reliance could be placed on the Company's word. In Bengal the Indian princes, time

after time, were reminded that the Company would never observe a treaty if it found it inconvenient. The war against the Marathas brought the Company within an inch of annihilation ; peace was made in 1782 on terms which the Marathas had offered 5 years earlier. There was no demonstrable improvement in the condition of the masses ; the annual auction of the right to collect revenue to farmers did not contribute towards the betterment of their condition. The administration of justice through the Company's courts subordinate to the Governor-General in Council seldom granted impartial justice to litigants. Hastings spent Indian revenues recklessly in providing for the worthless relatives of English public men and of the holders of the East India stock. The cost of civil administration in Bengal mounted from about £250,000 in 1775 to about £925,000 when Hastings left. The stink which Chatham had condemned in 1773 was found by his son Pitt still in existence in 1784. Parliament decided to take a firm stand now. The British government undertook to guarantee good government in India. Hastings had spent huge sums from the Indian revenues in securing himself in the Court of Proprietors. All the political parties agreed in condemning his Indian administration and strove to provide that in future no Governor-General should be able to save himself in this fashion. 'Anarchy and confusion' still prevailed in India, and called for some adequate remedy.

CHAPTER IV

PARLIAMENTARY CONTROL OF INDIAN AFFAIRS.

The Regulating Act represented the first heave of the British giant ; but fortunately his next interval of slumber did not last long. Indian administration continued to claim the attention of the British public continuously after 1781. There was a spate of proposals for reforming the organization of the Company's administration in India. Dundas as a member of the Whig opposition introduced one bill, Fox as the member of the Fox-North coalition government introduced another. Its defeat in the Lords was followed by the fall of the coalition. Pitt who now came into power had vehemently denounced Fox's India Bill. The Lords, the Commons and Pitt had not risen to defend the Company's administration in India. They had only used Fox's India bill to bring about the end of the coalition government. Now that Pitt was in power he felt the need of reforming the administration of India by the East India Company as much as his predecessors in office.

Fox's aim had been simple and his means to attain them straightforward. He had intended depriving the East India Company of its right to administer Indian territories. It was to be reduced to a subordinate position in the direction of its commercial activities. Merchants trading to the East, Fox asserted, could not claim the right to administer territories. Whatever claim they may have had in law, they had forfeited it by the way in which they had misgoverned Bengal since 1765. Fox had therefore proposed appointing commissioners holding office for four years vesting in them the direction and control of Indian affairs. Now that Pitt was in power, he also felt that he should not leave the East India Company to

administer its territories in India but he found it hard to advocate in office what he had denounced in opposition. He decided therefore to have recourse to fiction, to create an Indian Ministry without appearing to do so and to end the Company's control of Indian affairs while letting it appear that it continued to direct the administration of its Indian territories. The shams and the fictions of Pitt's India Act were thus the result of political exigencies in England and had nothing to do with the nature of the problem of administering the British territories in India.

It is necessary to remember that as a measure for the direction and control of Indian affairs in England, the provisions of Fox's India Bill might have proved superior to the shams of Pitt's India Act. There was nothing wrong in Fox's scheme of bringing to an end the exercise of political power by the Company. This was *formally* done in 1858. Fox was not much in advance of his times either. That the shareholders of the East India Company had objected to being deprived of their 'political gains' was but natural. They opposed the formal transfer of India to the Crown even in 1858. Pitt's India Act needlessly saddled India with the cost of a dual establishment in England and allowed the shareholders of the East India Company to fatten themselves on Indian revenues.

The main object of Pitt's India Act was to provide for the better control of Indian administration in England. Warren Hastings had used the Court of Proprietors to rescind his recall from India as demanded by the Commons. This sounded the death-knell of the Court as a political body. The Act deprived it of its power to interfere with the ordering of civil and military affairs in India. The shareholders of the Company thus lost all title to a share in the direction of its administration in India.

Warren Hastings' reckless handling of the Company's relations with Indian princes received attention next. It was laid

down that the Company should neither entangle itself in alliances with Indian princes nor commence hostilities in India without the express permission of the British Government. Its agents in India were however given the power of repelling the actual invasion of the Company's own or its allies' territories and to act as they thought fit when preparations for such an invasion were being made by their enemies.

The entire direction, supervision and control of the Indian affairs was placed in the hands of the British ministry of the day. Care was taken to conceal this fact. The Act did not mention a Minister for Indian Affairs, instead it spoke of a Board of Control. This was to consist of six privy councillors, two of them being a Secretary of State and the Chancellor of the Exchequer. Pitt had fulminated against burdening the British tax payer with the cost of supervising Indian affairs. The four privy councillors were therefore to be paid no salaries for their work as members of the Board. It was not, however, intended that they should work without remuneration. This was to come out of the existing sinecures. A quorum of three was necessary for the meetings of the Board. The Chancellor of the Exchequer was to preside ; in his absence, the Secretary of State and in the absence of both, the senior member of the Board. The Chancellor and the Secretary were busy ministers, they seldom attended its meetings. The senior member emerged as the President of the Board. All sinecures lasted only so long as the Government granting them remained in power. The four privy councillors therefore remained members of the board only so long as the party appointing them remained in office. Thus as members of the board they became members of the Ministry ; the President of the Board became in fact Minister for India. Some of the holders of the office were members of the Cabinet as well.

The quorum of three soon became a fiction as also the Board. The three junior members of the Board felt no urge

Acc. No. 2488

to attend its meetings. They quietly dropped attending them. The work came to be done by the President who secured the singnatures of the Secretary and the Chancellor to his own orders thus retaining the fiction of a quorum of three members.

The Board was vested with the power of superintending, directing and controlling Indian affairs. But the Company's servants in India received all their orders from England from the Board of Directors. A sub-committee of the Board of Directors called the Secret Committee was set up consisting of its three senior members. Secret orders were sent by them. But neither the Board of Directors nor its Secret Committee could send any orders to India unless these had been previously approved by the Board of Control. Despatches from India continued to be addressed to the Board of Directors and in reply to those of the Secret Committee, to that Committee. The Directors sent all their Indian despatches to the Board of Control within a fortnight of their receipt. They asked their servants in India to send home two copies of every despatch. On receipt, one of these was immediately sent to the Board of Control. The Board could ask for any papers it needed. The Board of Control possessed the right of signifying approval or disapproval of the Directors' proposed orders; it could modify the orders or substitute entirely new ones on the questions raised. It could ask the Directors to propose a despatch on any question and when it was submitted to it to alter it so as to carry out its own plans in the matter. The Board of Control thus possessed the right to correct all mistakes of commission and omission of the Directors. The policy followed by the governmental authorities in India was therefore that of the Board of Control i.e. of the British Government of the day. The Directors were assigned a decidedly inferior position in the final framing of the Indian policy. But they still possessed the initiative in Indian administration. The Board of Control had a very small staff,

the Directors had a large staff of permanent civil servants. All the original records were at the East India House. The Directors were thus better equipped to frame proposals about Indian administration than the Board of Control. The proposals they made were of course very often the work of their very able permanent servants. The Board of Control was interested usually in the foreign and political policy of the Indian authorities and the commercial policy of the Company.

Had the letter of the law been followed the control of Indian affairs from England by two independent authorities would have presented many difficulties. But the English spirit of accommodation smoothed the way of both the parties. The Directors sent the despatches to the Board as soon as they were received. Conveniently thereafter the Chairman and the President met over a cup of tea when the Chairman outlined the course of action he intended proposing on the despatch. A discussion followed and very often a course of action was agreed upon. The Chairman would then call a meeting of the Directors where he would secure their approval to the course of action he had already agreed upon with the President. In due course a draft of the proposed despatch would be sent to the Board of Control. The President would then signify his approval whereafter the final draft would be submitted to the Board and approved. It has been reckoned that between 1784 and 1833 fifty per-cent of the proposals of the Directors were approved *in toto* by the Board. Occasionally there would be difference of opinion between the President and the Chairman. Consultations were then renewed, alterations might be agreed to after the Board of Directors had considered the matter. Only five per-cent of the despatches are known to have been issued against the declared and determined opposition of the Directors. These figures are, however, deceptive. Some of the despatches on which no disagreement appeared were only formal. On bigger issues there were often differences

of opinion and in their decision orders of the Board i. e. of the British ministry prevailed.

The Directors however had the common law right of challenging in a court of law any order of the Board. When in 1786 the Board ordered that a certain number of royal soldiers be sent out to India at the Company's expense, the Directors approached the Court of the Kings' Bench for an injunction restraining the Board from issuing such an order.

The Board of Directors continued to make all the appointments in India. All the vacancies in the civil, military or medical services of the Company were divided into 28 parts. Every director made nomination equal to 1/28 part of the total, the Deputy Chairman and Chairman of the Board of Directors and the President of the Board of Control nominated twice as many. The law kept the patronage in the hands of the Company, but wisely the Directors allowed a share—a double share—to the President to keep him happy over the way in which the nominations were made. The nominees on the civil side—the writers—had to be between 14 and 22 years of age. If they returned to England and stayed there for more than 5 years they were disqualified to hold a post in India unless the stay was for reasons of health. All promotions were made by seniority.

The Directors appointed the Governor-General with the approval of the Crown. The appointments of the Governors of Bombay and Madras and the members of the councils at Calcutta, Bombay and Madras required no such approval. The Directors could recall any of these high dignitaries. The Governor-General and Governors were subject to recall by the Crown as well. To avoid the confusion that these provisions would have produced, it became a practice to make these appointments in consultation with the Cabinet. This sometimes led to lengthy negotiations and clumsy compromises.

The right to recall was exercised once by the Crown and once by the Directors though on different occasions.

The councils at Calcutta, Bombay and Madras were reduced to three members. The Governors and the Governor-General thus acquired an effective casting vote. In a council of 4, if they could persuade one of the three members to their side, they could carry on the administration as they desired. One of the three members was the local commander-in-chief. It was felt—and rightly—that if a Governor or a Governor-General could not persuade even a single member of his council to his own lines of policy his case must be very weak. Only senior members in the Company's service were to be appointed councillors. This reversed the process begun by the Regulating Act which had sent independent public men as the members of the Council. Recalling Warren Hastings's verbal resignation and its subsequent retraction, it was now laid down that all resignations must be given in writing. In case of a vacancy in the office of the Governor-General or the Governor, the senior of the two civilian councillors succeeded temporarily. If the Directors failed to fill up a vacancy in the office of the Governor-General, Governor, or members of a council promptly, the right to fill up the vacancy passed into the hands of the Ministry. A person so appointed could not be recalled by the Directors.

The Governor-General and Council were not authorized to begin hostilities or make peace without the express permission of the Court of Directors. The Governments of Bombay and Madras could only declare war with the express approval of the Governor-General and Council of Bengal. All treaties were to be concluded by the Government of Bengal. In order to make the conduct of war effective through the Government of Bengal, the commander-in-chief of Bengal if he moved into Bombay or Madras, replaced the local commander-in-chief as a member of the local council and the head of the local army

and could thus direct operations himself. In case the Governments of Bombay or Madras failed to obey the orders of the Government of Bengal in matters concerning peace or war, the Government of Bengal could suspend all the members of the offending government. Thus the administration of military affairs and conduct of diplomacy came to be centralised in the hands of the Government of Bengal. Bombay and Madras were also required to supply copies of all the regulations made by them to the Governor-General and Council of Bengal.

New offences were created in order to purify the services. Receiving or demanding presents by a public servant in India became punishable as an extortion and refusal to obey the Directors also became a crime. The Company could not pardon a public servant duly sentenced nor could it retain him in service. To frighten the public servants into the path of righteousness, it was laid down that on their return to England they should declare on oath their ill-gotten gains. The English courts in India were given authority to hear and determine cases of all British subjects anywhere in India.

Thus Pitt's India Act altered the foundations of the direction of Indian affairs in England. The Court of Proprietors lost all political power, the Directors played the second fiddle to the British Government. They no doubt possessed almost unlimited powers of issuing orders which the Directors were bound to obey. The system was both dilatory and cumbersome. It should however be remembered that on the average it took two years to get an answer to a despatch sent from India ; the English direction of Indian affairs from England was very often in the nature of a post-mortem. As English public men were usually sent out to India as Governor-General and Governors and as their ascendancy over their service colleagues on the council became established, the actual administration was mostly carried on by the men on the spot. But the Act

ensured that government in India would be carried on in accordance with the wishes of the British Government and the House of Commons. A vacilliating Court of Proprietors controlled by selfish interests in England whose support could be easily secured by the head of the Company's government in India by a scandalous use of patronage could no longer affect Indian issues. The Act almost entirely altered the position of the heads of government in Bengal, Bombay and Madras. They were no longer senior colleagues of the members of the local councils. They became executive heads of the administrations over which they presided. The supremacy of Bengal over Bombay and Madras in matters of peace and war became firmly established, though Bengal's subordination to England remained illusory. The relations between the Directors and the Ministry were delicate, yet open quarrel was very often avoided.

CHAPTER V

EMERGENCE OF AN ADMINISTRATIVE MACHINERY. 1784-1813

Pitt's India Act left the organization of administration in the Indian territories of the Company almost severely alone. But before we study this subject, it is necessary to complete our survey of parliamentary legislation about India till 1813 when the Company ceased to exercise the monopoly of trade with India. It will give us a fairly good idea of the limits under which the British administration in the acquired parts of India was to be carried on.

When the Board of Control ordered the Company to station certain British regiments in India and pay for them, the Directors refused and took the matter to court. A compromise was affected by an Act of 1788 whereby the number of troops to be sent was fixed. Allowances or increments to the Indian garrison, if any, were made dependent upon the concurrence of the directors. The same year saw the emergence of the practice of laying before Parliament the annual statement of revenue and expenditure in India. The ministers and the directors were both anxious to appoint a Governor-General who should be above reproach. Lord Cornwallis was approached ; he consented to go out to India but on his own terms. He was a politician as well as a general. He insisted therefore on being his own commander-in-chief. This created a curious position. The number of members of the council was now reduced to two only. In a council of three the Governor-General could not exercise his casting vote. He therefore insisted that combining the office of the Governor-General and Commander-in-chief as he did, he should be given the power of overriding his council.

Parliament agreed and Cornwallis became Governor-General and Commander-in-Chief of Bengal in 1786.

The Charter fell due for renewal in 1793 while Cornwallis was still the Governor-General. The Company's commercial privileges were renewed for another twenty years. The Board of Conntrol was to consist of one senior member who was now styled President. The two junior members need no longer be Privy Councillors. All the three were now paid not by Parliament, as other ministers were, but out of the Indian revenues. The secretary of the Board was allowed to sit in Parliament. This usually provided ministerial representatives of Indian administration in both the Houses.

The power given to Cornwallis to override his Council was now extended to all Governors-General and Governors. The councillors were now civil and military servants of the Company, the Governors and the Governors-General were usually public men from England. It was felt that the latter could safely be entrusted with the right to override their councils except in the matter of defence, law and taxation. As the expanding interests of the Company sometimes demanded the presence of the Governor-General outside Bengal, a vice-president was appointed out of the civilian members of the council. When the Governor-General moved into Bombay or Madras, he superseded the local Governor as the head of the administration. The Governor however retained his seat on the council.

Cornwallis had disclosed the scandalous state of affairs in the distribution of patronage in Bengal. He had stoutly resisted the requests for jobs even of such high personages as the Prince Regent. But it could not be expected that all Governors-General would possess his moral integrity. Parliament now stepped in to provide that no office carrying an annual salary of £ 500 or above should be given to any one except a regular servant of the Company. Only after six years' regular service would a public servant get £1,000 a year,

£3,000 could be paid only to a civil servant with at least 9 years' service and to receive £4,000 one must have served the Company for at least 12 years. Cornwallis had raised the salaries of the public servants all round. These provisions secured that the plums of service would go to regular servants of the Company rather than to outsiders. This stopped the flood of adventurers in India and secured due promotions to Company's servants. It however shut out Indians from jobs carrying a salary of £ 500 or more.

It was felt necessary to provide for some sort of crude sanitary arrangements in the Presidency towns. The power to raise taxes in general was supposed to be derived from the Mughal emperor. In the Presidency towns, however, it was feared that British subjects of the Company might take exception to the levying of local rates on them without Parliamentary authority. It was now enacted that the Company could levy sanitary rates. Lincenses for sale of alcoholic drinks were to be issued by justices of the peace. So far the Governor-General, the members of the council and the judges of the Supreme Court had functioned as magistrates and held quarter sessions in order to administer British criminal justice among the British part of the population. They were otherwise overworked and hence power was given to the Governor-General to appoint more justices of the peace in consultation with the Supreme Court.

Revenues of the country were again dipped into to provide a dividend of 10 per cent to the shareholders. The company was to pay in future the actual expenses of the royal troops stationed in India. Since 1790 the Crown had been recruiting European soldiers for service under the Company at a capitation charge debited to Indian revenues. Though no other British possession was paying these charges, the practice was continued.

In 1797 the total number of judges in the Supreme Court at Calcutta was reduced to three. In 1800 a Supreme Court was established at Madras.

When the Charter Act fell due for renewal in 1813 the Company's territory in India had expanded so much that it seemed awkward to continue it as both a commercial body and political sovereign. During the Anglo-American war of 1810 and 1812 it was found that ships flying American flags had poached on the Company's preserve of trade in India while its monopoly had kept Englishmen out. The new economic theories of *laissez faire* were now taking root in the public mind in England. The Berlin and Milan decrees of Napoleon had attempted to close the European ports to the British. It was natural that the English merchants should claim a share in the British trade with India. As a result the Company lost its monopoly of trade in India but its China trade and trade in tea continued. Though the stockholders of the Company stoutly opposed this they did not stand to lose much. They were guaranteed a dividend of 10½ per cent out of the revenues of India if the commercial account failed to provide that. The Company's patronage was restricted in two ways. The Governor-General, the Governors and the Commander-in-chief were now appointed by the Directors with the approval of the Crown signified through the Board of Control. The members of the councils were appointed with the direct approval of the President of the Board of Control. The distinction made was mostly formal but it signified that the first set of appointments was made by the King and therefore was on a higher level. Lord Wellesley had established a College at Fort William for giving training to the Company's servants in Indian literature, history and laws. He had proposed that every servant of the Company should spend his first two years there. He had carried out this scheme without reference to the directors who learnt that such an

institution had been founded only when a demand for its building was included in the estimates of expenses for the year. In chagrin they scrapped Lord Wellesley's scheme, set up a college of their own at Haileybury in 1805, but allowed the college at Fort William to function as an examining body The Act of 1813 confirmed these arrangements but placed these two institutions along with the college at Madras and the military academy—training military engineers and artillery men—at Addiscombe under the supervision of the Board of Control, the Directors could not now send their nominees direct to India. They made nominations for seats at Haileybury and Addiscombe ; their nominees had to reside at these two institutions for a required number of terms before being sent out to India.

Now that the East India Company's territories in India had grown into a British Empire of India, the British Government was allowed to send 20,000 Royal troops at India's cost to India unless the Company demanded a larger garrison.

Open trade with India was naturally expected to bring a large number of Britishers to India who would not be the Company's servants. It was feared they might not easily accept the status of the Company's subjects. It was laid down therefore that all British subjects of the Crown were liable to taxation by Indian authorities. Justices of the peace were given authority to entertain cases against British subjects for assault or tresspass brought by Indians. They could be sued for small debts in these courts. These arrangements applied to all British subjects residing within 10 miles of the Presidency towns. Those living beyond that radius were made subjects to the jurisdiction of the provincial courts and were to be tried for criminal offences by special courts. No Britisher could come to India without a permit from the Court of Directors or the Board of Control. Enhanced punishments for counterfeiting coins, forgery and theft were provided for if committed by the Britishers in India. These provisions

form a curious comment on the general character of the Englishmen who were expected to come to India. This explains Parliament's anxiety to safeguard the interests of the Indian residents in the Company's territory. The Act continued the vicious system which provided that the Britishers in India were to be tried by the Britishers alone. This denied justice to Indian victims and made a mockery of the elaborate provisions of the Act for securing them justice.

There had been persistent demand for evangelical activities in India. India was therefore saddled with what later on developed into the ecclesiastical department of the Government of India. She became a province of the see of Canterbury ; a Bishop of Calcutta and four archdeacons in the country were appointed at the expense of the Indian taxpayers. Missionaries were also allowed to come to India under permits.

Rs. 1,00,000 a year was provided for the encouragement of the learned natives of India, for the revival and improvement of literature and for the introduction and promotion of a knowledge of sciences in the Company's territories in India. It is wrong to see the beginning of an educational policy in India in this grant. The state was not doing much for education in England, its representatives could not be expected to do better in India than their principals in England. It represented a sort of conscience money to offset the grant made for the spread of Christianity in India.

Before we turn to the study of the administrative machinery in India during this period, it would be helpful if we record the expansion of the British territory that had taken place in India. Despite the extravagant claims that have been made on behalf of Warren Hastings, the Company's only gain during his Governor-Generalship had been the Zamindari of Benares. The thirty years of warfare, intrigue and diplomacy that followed his departure saw the absorption of one half of Oudh and Mysore, the incorporation of Carnatic in the Presidency

of Madras, and that of Coorg and Surat in the Presidency of Bombay. The British residents at Hyderabad, Oudh, Poona, Delhi and Baroda acted as the watch-dogs of British interests in India. The English agents controlled the states between the Satlaj and Delhi. There was a British resident at the independent kingdom of Lahore who effectively prevented Ranjit Singh from going beyond the Satlaj. Thus the British acquisitions in India were very large. They exceeded in population the Portuguese and the Spanish colonial empires of the day.

Though some able servants of the Company loved to play the part of Indian administrators working Indian institutions, the fiction of an authority derived from a shadowy Mughal emperor no longer worked in any part of the country. Since 1803 a descendent of Akbar was living in the fort at Delhi under British protection. His authority was confined to the city of Delhi but he was still addressed as His Majesty by the Company whose representatives styled themselves his humble servants in the true oriental style. But the English writ ran elsewhere independently of the Mughal emperor or the Maratha Peshwa.

The rival European companies in India now occupied a very humble role. They had their small factories which they ruled as independent stations. But the French, the Dutch and the Portuguese 'possessions' in India were neither extensive nor many. Ceylon had been acquired from the Dutch during the Napoleonic control of Holland.

Naturally such an extensive territory had to be directly governed. The worries of public administration could not now be transferred to other heads. A public service was needed for discharging the manifold functions of the State in British India. Courts were improvised and put on a sound footing. Arrangements for raising taxes had to be made. An army—rather three armies—had developed from strength to

strength. All this had been done within the four corners of Parliamentary Acts or under authority inherited from Indian rulers.

The Company had long been insisting that its servants should neither extort nor receive gifts nor should they indulge in trade upon their own account. But as their salaries were small the infringement of this order was for long connived at. They had been further encouraged to augment their salaries by 'perquisites of office.' Some of these were nothing short of forbidden practices. Cornwallis had succeeded in persuading the Company that it was foolish to expect people to serve it honestly on such meagre salaries. The salaries were thereupon raised all round. In some cases they were raised beyond all reason. A Collector received Rs. 1500 a month plus a commission of 10 per cent on revenues collected in his district which sometimes amounted to more than another Rs. 2,200 a month. But the assistants only received from Rs. 300 to Rs. 500. Cornwallis refused to pander to the wishes even of the most exalted personages in England in making appointments in India and thus succeeded in convincing the servants of the Company that they would be appointed to the highest offices in India if they would keep straight. Various parliamentary enactments further secured that civil servants and cadets, though nominated to their jobs by the directors, depended for their subsequent promotion upon their official superiors and ultimately the Presidency governments in India. Indians were excluded under Parliamentary authority from all offices worth more than £500 a year. Under Cornwallis they ceased to be employed even in jobs carrying a salary of £200 a year.

It should be remembered however that these provisions applied to the Regulation provinces of Bengal, Bombay and Madras. In the states of Benares and Oudh and the area not included in any of the provinces, the Governor-General could use

his discretion. Sometimes he did use it to appoint rank outsiders and his own nominees from the army to some of the prize posts in the administration.

In England the directors and the President of the Board of Control nominated cadets and writers to the Addiscombe Academy and Haileybury College. On their reaching India, the College at Fort William provided necessary directions in the study of Indian laws, history and Indian and classical languages and rewarded successful candidates by the award of certificates which brought additional allowances. The cadets and the writers were posted in India to the various Presidencies and Presidency armies in accordance with the orders of the directors.

The administrative services were divided in 1793 intd separate executive and judicial branches. On the executive side the collectorship was the main goal reached by most of the civil servants, a select few were promoted to the provincial courts, while for others there were the prize posts of the membership of the Board of Revenue and the presidency councils. But before a writer blossomed out into a collector he received training in many minor jobs. On the judicial side, there were the city courts, the zilla courts, the provincial courts and the Sadar Diwani and Sadar Nizamat Adalats in Bengal. In 1801 the Sadar Diwani Adalat became a judicial body consisting of three judges. In 1811, it was laid down that it was to consist of a Chief justice and as many judges as the Governor-General and Council thought necessary. There were four provincial courts in Bengal to hear appeals from the city and the zilla courts. Another provincial court was set up for Benares and a sixth one for the ceded districts followed soon after. The judges of the city and the zilla courts were authorised to delegate to their Indian Registrars the task of deciding cases for Rs. 200 and below. Indians in the judicial departments occupied the lowermost position as Sadar Ameens

and Munsiffs authorised to deal with cases for Rs. 50 and below.

On the criminal side, the Governor-General and Council had ceased to function as the Sadar Nizamit Adalat. Criminal justice was taken over from the nawabs in 1793. For another eight years the Governor-General and Council sat in appeal in criminal cases but in 1801, judges were appointed to the Sadar Nizamat Adalat. In 1811 the number of judges was increased and the senior judge became the Chief justice.

At first there were four courts of circuit but they were subsequently increased to six. A court of circuit consisted of a judge of the provincial court of appeal with a Qazi and a Mufti attached. The judges of the circuit went on tour and heard cases in various stations, whereas the chief justice remained at headquarters. The circuit judges heard and decided all the serious cases in the outside stations by rotation. They were helped by Indian commissioners learned in Muslim law. The civil judges, Sadar Ameens and Munsifs were given authority to entertain, hear and determine cases involving smaller offences.

The judges in the city courts and the zilla judges were appointed ex-officio magistrates. As such they divided their areas into police circles. For every circle a Darogah was appointed. In the cities a Kotwal was appointed as the head of the Darogahs. The Darogahs apprehended and sent up all the offenders in their circle for trial by the appropriate magistrates. The jails were also looked after by the magistrates. They were given assistants. In 1810 government started appointing joint magistrates from outside the ranks of the city and the zilla judges.

This organization of justice was based on the English model. But it lacked the honorary agency that England had. Further, the number of courts was not enough for the areas they served. The procedure was not suited to Indian conditions. The neces-

sity for written records of transactions, the production of witnesses on oath who were not believed, their cross-examination in court and the ignorance of the judges rendered justice a farce. The British tried to secure some semblance of justice by providing a large number of appeals. This prolonged the cases unnecessarily and undermined the authority of courts. A litigant was lucky if he had his case decided in his lifetime.

In Madras the institutions originally set up in Bengal were established in 1802. In Bomaby Hindus were governed by their own criminal law instead of the Muslim criminal law which prevailed in Bengal and elsewhere.

It is thus clear that till 1813 the British mostly functioned as a police state in India. It collected revenue with which to pay its servants. It undertook to decide such cases as arose among its citizens according to their own laws but in the courts of its own devising which followed a procedure very much alien to the people's institutions. Its collection of revenue during this period left the actual cultivators at the mercy of the zamindars who in their own turn very often found part of their lands sold and themselves in prison for failure to pay the revenue assessed. But it set up a system of administration not very much dependent on persons who administered it and capable of dealing with all irrespective of their status in life. Its cost was heavy. Indians had no place in it either. It is arguable that by safeguarding the territories under their control from external aggression the East India Company guaranteed to the inhabitants the right to live their lives in their own way.

CHAPTER VI

ADMINISTRATIVE REFORMS

1813 to 1833

The Charter Act of 1813 made the East India Company mainly a political organization in India. The twenty years after the Charter Act of 1813 saw the Company function in India as a non-commercial body. The expansion of British territories in India during this period was very large. The easiest way of estimating British acquisitions in India is to fix our attention on parts of India that remained outside British influence. In 1833, only the Punjab, Sindh, Gwalior, Indore, Bhutan, Tibet and Baluchistan were outside the area of such influence. The British had succeeded the Marathas as the imperial power in India. This had added the whole of Maharashtra, Central India and Rajputana to the domains of the East India Company. The provinces of Bombay and Madras were completed, the foundation of the Central Provinces had been laid and the Central India Agency was emerging. Nepal had become an ally of the British. The East India Company thus stood forth unchallenged as the imperial power in India.

The imperial legislation of the years between 1813 and 1833 concerns minor matters and mostly follows the lines already laid down. The Acts passed in 1814, 1815, 1818, 1825 and 1826 defined and added to the powers of the East India Company in India. They asserted the powers of the Indian Government to levy customs, validated Christian marriages contracted in India and performed by Scoch clergymen, allowed the Company to extend the boundaries of Presidency towns,

set up a Supreme Court in Bombay (1823) and burdened India with not only the additional salaries of the European troops and members of the eccleciastical department in India but their pensions as well. The Indian Mutiny Act was amended in 1823 and extended to cover the Bombay Marines in 1832. In the same year a religious distinction disappeared when it was laid down that all the jurors need not be Christians. The presence of Europeans not in the service of the East India Company was recognised by the provision that non-official Europeans also could be appointed justices of the peace. The emergence of a voluntary corps of infantry not exceeding 800 in all and recruited from among the European servants of the Company was authorised in 1820 thus laying the foundation of another racial distinction which remained in existence for a century. Minor Acts needed to deal with special pleas raised on behalf of the European British subjects were also passed.

On the administrative side this period saw the reversal of Lord Cornwallis's policy in two ways. The separation of the judicial and executive functions on which he had laid so much stress, disappeared by Regulations of 1821 and 1831 in the wake of costly wars in India. The collectors were now authorised to hear and determine summarily all cases concerning the arrears of revenue and payment of rent. It was hoped this would facilitate the collection of government dues. As no code of procedure was laid down for the guidance of the collectors, this led to considerable oppression, the landlords not being protected from the state and the cultivators not being protected against the landlord. Now was bred the modern type of collector who was all in all in his district and who discharged his functions fairly well as long as his authority was not challenged. When, in the stress of national awakening in India, the collectors became judges of their own conduct, they proved as hopelessly incompetent as Lord Cornwallis had found

them. But the need for economy admitted Indians—of course on much lower salaries— to some of the jobs which had been filled till then by the covenanted servants of the Company alone. While removing one racial disability it perpetuated for almost a century another, the wide disparity in the salaries of Indian and European administrators serving the state in the same capacity.

In 1829 the Courts of Circuit were abolished and twenty Commissioners of Revenue and Circuit were appointed in Bengal. Appeals lay from their decision to the Central Board of Revenue in civil cases and the Sadar Nizamat Adalat in the criminal cases. In 1831 they were authorised to delegate preliminary investigation in criminal cases to Indian Sadar Ameens. The city and zillah judges, when invested with necessary powers, could also try criminal cases after a magistrate had committed the accused for trial. In 1832, provision was also made to constitute panchayats and to appoint assessors to help the European presiding officers. The panchayats and the assessors only tendered advice, which the court was not bound to accept. Thus the office of the 'District and Sessions Judge' came into existence, invested with the power to sentence criminals to death and dealing with civil cases as the highest local court in a district or a group of districts.

The Madras system had closely followed Bengal except that the Governor and Council there still discharged the functions of the chief criminal court. In 1827 assistant judges were appointed there and were grouped together as joint criminal judges in their districts. Principal Sadar Ameens were to discharge similar functions without having the right to try Europeans or Americans. The Courts of Circuit continued in Madras though they were abolished in Bengal.

The administration of civil and criminal justice in Bombay was revised and codified in 1827. Magistrates and

assistant magistrates punished offenders guilty of minor offences. Zillah judges and assistant zillah judges exercised civil and crimnal jurisdiction. The more serious offences were tried by the Court of Circuit held by one of the judges of the Sadar Fojdari Adalat. A special court tried political cases. Appeals lay from it to the Governor in Council originally, but in 1827, the Sadar Fojdari Adalat were vested with the power to sit in appeal over these courts. Their decision was subject to confirmation by the Governor in Council. Indian assessors and assistants advised the European judges and magistrates. The Sadar Fojdari Adalat heard appeals from zillah judges and Courts of Circuit. In 1830 the judges of the Sadar Fojdari Adalat discontinued going on tour. The criminal judges became Sessions Judges and heard all the serious cases.

Two appellate courts for criminal and civil cases were set up in 1831 for the districts separated from Oudh under Lord Wellesley.

A Supreme Court was established in Bombay in 1824.

CHAPTER VII

CENTRALISATION OF INDIAN ADMINISTRATION THE CHARTER ACT OF 1833

As we have already seen, quite a large part of India had passed into British hands by 1833. The growing British power in India reflected itself in the new attitude towards Indian institutions and Indians that became typical during this period. As the years rolled by, the British civil and military servants developed an attitude of overbearing insolence in the country. At first they had been willing to learn about Indian law and custom, usages and practices. But now they seemed to assert that any thing which they did not know, or that was not recorded and pigeonholed somewhere in their secretariat was either not worth knowing or did not exist at all. They further developed the crusading spirit which held that existing Indian institutions were 'stuff and nonsense' and the earlier they reformed them, the better for all concerned. Dreams of seeing India a great Christian country were indulged in by members of the governing classes who took the loyalty of the Indian masses for granted.

How this affected the administration of the country we shall study a little later. But let us notice here the fact that this overbearing insolence of the British did the country some good though not in the way intended by its rulers. We need shed no tears today over the fact that some of the medieval institutions disappeared to allow the speedier emergence of the modern era. Nor need we always condemn the attempts from whatever motives made to suppress some of the evil customs and practices.

Parliamentary legislation of the period was directed towards

two aims, liquidating the East India Company and centralising British administration in India.

The Charter Act of 1833 abolished the commercial monopoly of the Company's trade in tea and with China. It was to wind up its commercial affairs preparatory to final disappearance. India was saddled with all the Company's debts, commercial and territorial. The stockholders were assured a dividend of 10% now frankly out of the Indian revenues. The purchase price of the stock was fixed at double the issue price and was to be paid out of the Indian revenues. The Proprietors continued electing Directors who had nothing to direct in their own right. The Act comtemplated that the exercise of patronage by the directors would be very much restricted. It provided that their nominations to seats in the Haileybury College would be double the number of vacancies in the services. Those nominated would join that College. After receiving instruction there, all the candidates would be examined. The topmost candidates would then be selected to fill the vacancies. This would have raised the standard of the entrants to the public services, but it would have severely curtailed the patronage of the directors. The directors fought hard against this provision with the result that their patronage was continued for another twenty years by an amending Act of 1834. The President of the Board of Control now became Minister for Indian Affairs. The fiction of his having colleagues on the Board disappeared, he was now to have two Assistant Commissioners and as their new designation declared, they were his assistants rather than his colleagues. His secretary—Macauly at this time—occupied a position of great influence because he was usually in Parliament and spoke for his chief when the latter sat in the Lords. The way was being paved for the emergence of a Secretaryship of State for India. The Directors now occupied the position of expert advisers of the President—expert because they had the

assistance of expert permanent servants in the East India House.

The East India House continued as before. It housed all the records about India and the Far East. Its Examiners worked as its secretaries and included such men of eminence as James Mill, the historian.

The Indian possessions of the Company were now declared to be held by the Company in trust for the British Crown.

In India the main provisions of the Act centralized the administration of the country. The Governor-General of Bengal now gave place to the Governor-General of India. The Council also became an instrument of Indian administration and the style of the new government became the Governor-General of India in Council. In the new Indian Government was vested the power to control, superintend, and direct the the civil and military affairs of all the territories now under the East India Company or to be acquired hereafter. This placed Bombay, Madras, Bengal and all other districts completely under the authority of the Government of India. All the revenues were raised under the authority of the central government. All expenditure was henceforth authorised by it. There was only one budget for the whole country prepared under the authority of the central government. Governments of Bombay and Madras were authorised to spend within the limits of the money allotted to them for purposes which the Government of India had already approved. The creation of any new office which carried a pension required the sanction of the Government of India. The Governor-General in Council continued to enjoy the authority already granted to him in 1784 to suspend any member of the governments of Bombay and Madras who disobeyed him. If a provincial government failed to carry out the orders of the central government, it could be suspended. When the Governor-General moved into a Presidency, he superseded the Governor and exercised the right of over-riding

the local council as well. He could thus secure the entire obedience of presidency governments. The Directors writing in 1834 to the Governor-General told him :

"You are to consider to what extent the powers of government can be best exercised by local authorities, in what manner and to what extent and in what particular they are likely to be best exercised when retained in your own hands."

Even in matters which were left to the local authorities the Governor-General was told five years later not to 'allow to pass without comment, and, if necessary, without active interference, any measures having in your opinion, an injurious tendency either to one presidency or to the (Indian) Empire at large.' The immediate result of this policy was to centralise all power practically in the hands of the central government. In sanctioning the demands for expenditure, it scrutinized every item submitted and could raise problems of administration as well as of administrative policy. All the subordinate governments kept the Government of India continuously informed of their progress in all departments of provincial administration. The Government of India when it acknowledged the receipt of such information exercised the right of commenting upon the work of the provincial governments.

The new Government of India consisted of the Governor-General and three ordinary members of the council. The Commander-in-Chief was usually appointed the fourth extra-ordinary member. The Act of 1833 added a fifth member —eminent in law—only for legislative purposes. But he attended all the meetings of the Government of India by special invitation. He had no vote at the council and his presence did not make up the quorum of two necessary for the transaction of all business. Of the three ordinary members of the council, two were civil servants of at least ten years' standing and one a military officer of a similar status.

It was decided to relieve the Governor-General of the burden of local government by the creation of two governorships, one for Bengal and another for Agra. These intentions of the Act were not fulfilled. Agra was placed under a lieutenant-governor in 1826 and Bengal continued to be under the Governor-General who however appointed a Deputy Governor to work as the head of the administration in Bengal during his own absence from Bengal.

The number of the members of the councils of Bombay and Madras was reduced to two.

Bombay and Madras retained their separate armies under separate commanders-in-chief. But as the disposal of the military resources of the entire country was under the Governor-General in Council, this sign of independence did not in fact mean much.

Such portions of the new territories as did not form part of the presidencies of Bengal, Bombay and Madras were directly governed by the Governor-General in Council through his agents. Bombay and Madras, though they retained the official use of the title, presidency, became in law provinces of British India. They continued to enjoy the privilege of corresponding directly with the Directors without thereby gaining any substantial advantage. Their Governors were appointed by the Crown.

Centralization was most marked in the matter of law. Bombay and Madras lost the right to make their own laws. The Governor-General in Council reinforced by the fourth ordinary member with legal qualifications now became the only law-making body in India. It could make laws on almost all subjects. These laws were applicable to all things and to all persons in British India, and in the case of the servants of the Company, anywhere in allied India. They were enforceable through all the courts in India, Company's or the King's. No one could refuse to execute its mandate. It could make

'Articles of War', the code of military discipline, for Indian officers and soldiers of the Company and provide for the administration of justice by courts martial on such officers and other ranks. Its power to make laws included the making, repealing, amending and altering any laws and regulations in force in India.

The exceptions to its power were very few and these were obvious. It could not alter the constitution of the Company or amend the Charter Act itself. It could not alter the Mutiny Acts as they were applicable to European soldiers in India, nor could it, without the previous sanction of the Directors, set up a court to sentence to death European subjects of the Crown. It could not alter the prerogative of the Crown. The most important clause prohibited it from making any law which would alter 'any part of the unwritten law or constitution of the United Kingdom, on which may depend the allegiance of any person to the Crown.' In the nineteenth century the Privy Council held that this debarred the subordinate law making body in India from abrogating or tampering with the unwritten laws and constitution of the United Kingdom which the sovereign of England was bound to observe faithfully.

Law-making was thus simplified. Some have tried to read in the Charter Act of 1833 the differentiation of the legislative and executive functions in India. This is an exaggeration. Even after 1833 all that was assured was that all the legislative projects of the Government of India would bear the imprint of a trained legal talent and will therefore be more 'word perfect.' The fourth member became in practice a regular member of the government taking part in all its administrative deliberations. Macaulay, the first law member, was able to influence for years the educational policy of the government though it had nothing to do with law-making. Avowedly the presence of the legally trained member was to replace registration at the Supreme Court—which as a matter of fact had never been

done after 1781. It was still more important that neither the presence nor the concurrence of the 'Law Member' was necessary either for the consideration or for the passage of any laws. A quorum of three was fixed for legislative work. For administrative work it was two.

The laws passed by the Government of India were to be called Acts. The Governments of Bombay, Bengal and Madras had made 'Regulations.'

The simplifying process in law-making went side by side with an attempt at codification of laws. There were several types of law enforceable in India; English Acts passed before 1726, English Acts passed thereafter and made applicable to India, Hindu law and custom, Muslim law and custom, Bengal Regulations, Madras Regulations and Bombay Regulations. Which of these laws applied to a particular person, and which of these had precedence when there was a conflict of laws were always difficult questions to decide. A Law Commission was now appointed to study, collate, and codify various rules and regulations. The Law Member was its chairman. After doing valuable work in India, the Commission was later on reconstituted in England in 1853. As the fruit of its labours the Indian Penal Code and the Codes of Civil and Criminal Procedure were enacted, simplifying and codifying substantive and procedural law.

The Act further declared that no Indian subject of the Company in India would be debarred from holding any office under the Company 'by reason of his religion, place of birth, descent and colour.' It was a grandiloquent gesture worthy of the first reformed Parliament. But otherwise it meant little. It is true that 'the policy of freely admitting Indians to a share in administration of the country has never been more broadly or more emphatically enunciated.' But no one could hold an office in India carrying a salary of £ 500 or

more unless he had been nominated to a vacancy by the Directors in England. The Charter Act made no attempt at securing that Indians be nominated to the covenanted service of the Company by Directors. Despite this declaration Indians remained excluded in both the civil and the military departments from any but the most minor jobs. When the Mutiny broke out no Indian was enjoying anywhere in India any job worth more than Rs. 2,000 a year. But this clause became the sheet anchor of political agitation in India towards the end of the century. Almost the entire political activities of the earlier years of national consciousness turn round this clause which came very handy when demands were being made for giving Indians equal opportunities in administration. The clause affected the policy of the government so little that the House of Lords passed a resolution against the admission of an Indian to the Council of the Governor-General 'by reason of race and birth' as late as 1910.

The presence of European settlers in India was now taken for granted. They were permitted to settle at ports and in the territories acquired by the Company before 1800, Carnatic and Cuttack. All Europeans were to register themselves on landing in India. Those intending to reside in the territories other than those described above still required licences unless the Governor-General in Council declared such a place open with the previous concurrence of the Directors. The settlers were now allowed to acquire land in India. The Governor-General in Council was authorized to make laws for preventing illicit entrance into, or residence in, British India—an authority which was not exercised for another thirty years. The Governor-General in Council could also make laws providing for the reporting and licensing of foreigners in India.

Though their entrance was no longer to be stoutly opposed, the Europeans were still considered a 'menace' in India. The Governor-General in Council was therefore directed to protect

Indians from insult and outrage in regard to their person, religion and opinions at the hands of Europeans.

For the benefit of the increasing number of Christians the ecclesiastical department was expanded to include three bishops of Calcutta, Bombay and Madras with appropriate establishments.

The Government of India was further required to take measures forthwith for mitigating slavery—not abolishing it—and for ameliorating the condition of slaves. Proposals for the ultimate extinction of slavery, whenever practicable and and convenient, were also to be made. Inspite of these provisions occasional forced labour in India on nominal payment continued till after the first World War.

CHAPTER VIII

INDIAN ADMINISTRATION ON THE EVE OF THE MUTINY

The Charter Act of 1833 was followed by a spurt of administrative activity in India. The most far-reaching result of this was the adoption of the vernaculars as the court languages in India. Persian was replaced by Urdu. Next in importance came the adoption of English education by the state. As Macaulay's Minute on the subject showed, this was done with a view to securing minor officials at a lesser cost to the state, to Europeanise Indian society and to undermine traditional thoughts and beliefs in India. While achieving all these things on some scale, the use of English as the court language in India led to the emergence of a spirit of unification in the country ; the study of western political thought and liberal traditions produced political awakening and national consciousness. The introduction of English education may therefore be taken as an important factor in the evolution of the Indian constitution.

In 1836 civil jurisdiction over Europeans was conferred on Indian courts and Indian judges as well. Up till then the Europeans were amenable to the Supreme Courts at the Presidency towns only. This practically meant that no justice could be had against the Europeans in India. Calcutta, Bombay and Madras were far away from the country, travelling was difficult, forms of litigation and procedure of the courts were alien to the people, and litigation at the Supreme Court was five times as costly in India as similar cases in England. Despite the rich promises of the Charter Act of 1813 nothing had been done to grant protection to Indians outside

presidency towns. The Act of 1836 went a long way towards granting protection in civil suits to Indians.

With the vesting of magisterial functions in the collectors and the transference of revenue cases to them, the collectors had become overburdened with work. Direction and superitendence of the police force in their districts suffered. The result was that in the thirties of the last century, 'complaints of their inefficiency and corruption became universal. The police was everywhere oppressive and corrupt. The Magistrates were either inefficient superintendents of police or apt to be biassed as magistrates.' This led to the appointment of separate superintendents of police at first in the presidency towns and later on in the districts in Sind, North Western Province, Bombay and the Punjab.

When the charter fell due for renewal in 1853, the Company was given the final notice to quit. It had no work of its own. The President of the Board of Control had taken over the direction of Indian affairs to a very large extent in his own hands. The directors now lost Indian patronage. All vacancies were to be filled by public competition and only the topmost men were to fill vacancies. The directorate was reduced to eighteen members ; of these six were to be nominated by the government. They were divided into three sub-committees of six each to deal with judicial, financial, and political business. The secret committee of three was also continued. Of the eighteen directors, 12 were to possess experience of Indian administration for at least ten years. A quorum of ten was fixed for meetings. The six governments nominees could always be expected to attend meetings and thus had a clear majority. The salary of the President of the Board of Control was now raised to £5,000 ; he became a cabinet minister in his salary as well. His approval was now made necessary for the appointment of the members of the council whereas the

Crown's approval for the higher appointment continued to be exercised through him.

In India, law-making was now separated from the executive business of the council. Besides the central executive, legislative councillors nominated by the provincial governments of Bombay, Bengal, Madras and North Western Province, the Chief Justice of the Supreme Court of Calcutta and another judge nominated by the Governor-General were summoned to atttend the meetings of the council for making laws. The proceedings became public and were published. A quorum of six was necessary ; these six must include the Governor-General or the chairman nominated by him to act in his absence, the law member or a judge and, when legislation affecting a province was being considered, the legislative councillor representing the province. Governor-General's assent was necessary to all laws passed by the council.

The central executive now received the member with the legal qualifications as a full member. The Governor-General was authorised to exercise all the executive powers of the central government when he was outside Calcutta.

Power was given to appoint a governor or a lieutenant-governor of Bengal. The Law Commission was now to continue its work in England.

The company was given due warning that it might lose whatever nominal share it had in the Government of India at any date. When the Mutiny occurred in 1857, action was taken under this provision to terminate the Company finally and transfer the government formally to the Crown. Before we come to that transfer, it would be necessary to study the system under which the Government of India was carried on in England and India.

About the year 1857 the superintendence, direction and control of Indian affairs was vested in a Cabinet Minister, the President of the Board of Control. The Board as such had

never functioned. Since 1841 no Assistant Commissioners had been appointed and thus it had even formally ceased to exist. The President had a secretary who sat in the House of Commons. Thus usually representatives of Indian administration sat in both the houses. From the nature of the case, Parliament never interested itself in Indian affairs except occasionally, so no detailed supervision of Indian administration was carried on in Parliament. Many opportunities for discussing the affairs of a great department of state that Parliament utilized were lacking in the case of India. The minister's salary was paid out of Indian revenues and so was that of his establishment. Taxes were raised in India by the authority of the Government of India. They were spent under the same authority though of course under the ultimate control of the President of the Board. Laws were mostly made in India. It was Parliament however that made alterations in the constitution of the Government of India and occasionally made laws affecting British subjects or imperial interests in India.

Indian records were housed in England at the East India House and not at the office of the President. Expert assistants examined them there. The Court of Directors held its meetings in the East India House and inspired by its permanent servants offered the necessary suggestions to the President. The court enjoyed the power of nominating, with the approval of the Crown, the highest officers in India. "The court received the despatches from India, discussed them and submitted to the Board the drafts of the despatches which they proposed to send in reply. The President might alter them or substitute others in their place. But to do this constantly or even frequently involved a power of work as well as a power of will seldom, if ever, to be found in a busy Cabinet Minister working single-handed and profoundly ignorant of the matters to be dealt with. The right of over-riding the court was exercised in secret and the President would receive no credit for it."

The President indeed sometimes intervened with great effect by placing an item of business in the Secret Committee, sometimes with disastrous effect as the invasion of Afghanistan in 1838 showed. The English ministry had of late started treating the Governor-Generalship as a political appointment. The results however had some times been very disastrous ; Lord Ellenborough when he had displayed his unsuitability for such an office of trust and responsibility was recalled by the Directors inspite of the protests of the President.

Since 1853, there were six nominees of the Government in the directorate. As they were always present at its meetings they formed a majority in a quorum of ten. Other directors had little interest now in attending meetings. The four subcommittees dealing with secret, financial, judicial and political departments did the preliminary spade work on the reports of their expert assistants.

Civil appointments to Indian administration were made through a public competitive examination started in 1854 under the regulations made by the President. The subjects for examination included the usual Honours courses in the English Universities. The examination was intended to secure ' young men who had received the best, the most liberal, the most finished education ' that England could afford. After selection they spent their first year as probationers in England usually at some British University studying Indian law, customs and institutions. There was a qualifying test at the end of the year after which they were posted to Bombay, Madras or Bengal Civil Service. The last included the whole of British India except Madras and Bombay.

But a large number of persons occupying civil posts in the Punjab, Nagpur, Ajmer and other newly conquered districts were drawn from the army. Military officers were very often seconded for civil duty. They did not thereopon renounce their military career. They received their regular promotions

in the army and could, when they preferred, assume their rank in the army even after an absence of several years.

Promotion in the army as well as the civil service was usually by seniority. The members of the council were not selected by seniority. Appointments to some of the jobs in the political department or the newly conquered territories were made by selection. The Charter Act of 1813 had defined the length of service which alone would entitle a civil servant to hold offices carrying certain salaries. Thus in order to be appointed to an office carrying a salary of £1,500, a civil servant must have served for 6 years ; a salary of £3,000 could be granted to a servant with at least ten years' service and it was only after having been in service for 12 years that a civil servant got £4,000.

The army in India consisted of the British garrison on duty in India, the European officers and other ranks recruited by the War Office in England for service in India and British officers serving in the army composed of Indians. The War Office levied capitation charges for the recruitment of officers and other ranks serving in the armies of the Company. The British garrison in India was paid for out of Indian revenues ; charges for its recruitments, transport and pensions were also similarly paid.

The chief executive in India was the Governor-General in Council. When travelling without his council, the Governor-General exercised all the executive powers except that of granting pardon. In such cases, there were two supreme Governments of India, the Governor-General alone and the chairman and the council at Calcutta. The division of work between them was difficult ; conflict of jurisdiction and clash of opinion between the two sometimes led to unseemly wrangle. The Governor-General in Council consisted of four ordinary members, two of them being civil servants of at least ten years' standing, one a military officer with the same number of years

of service to his credit. The fourth member was an English lawyer of some standing. The Commander-in-Chief was usually nominated as an extraordinary member but he mainly worked as the administrative head of the army.

The Council was a collegiate body. It met twice a week or oftener. All the papers were circulated to every member in turn in a closed box. The members opened the box, read the contents and recorded their opinions in a note. When the box had made the round, the minutes of the members were read by the secretary of the department concerned and if there was disagreement among the members, as usually there was, the minutes were again circulated and opinions once again recorded. The matter was then brought up before the full council for discussion and final orders. It was a very cumbersome and dilatory method of doing business some of which might require urgent despatch. The work was very heavy, as the adminstration of the country was centralized in the hands of the Government of India. The Governor-General could override his council or use his casting vote if it was ever equally divided. The later was seldom likely to be the case. The Commander-in-Chief attended very irregularly as he was often on tour.

Local administration was carried on through the division of India into provinces. Bombay and Madras were designated as presidencies and were governed by the Governors in-council. Bengal and the North Western Province were under lieutenant-governors. The Punjab, Assam, Nagpur, Oudh, Ajmer and Delhi were under chief commissioners directly responsible to the Governor-General in Council. The Governors and their councils were appointed by the directors with the approval of the Crown, the lieutenant-governors, and chief commissioners were appointed by the Governor-General in Council.

The local governments and administrations did their work under the direction, control and superintendence of the Govern-

ment of India. Their contral was most detailed in the chief commissionerships which were in law 'areas placed under the immediate authority and management' of the Government of India. The Governor-in-council in Bombay and Madras carried on direct correspondence with the directors in England. It did not formally make their position any the stronger by itself. They could, of course, use this right for appealing against the orders of the Government of India where these concerned them, but their appeals had to be addressed through the Government of India which possessed the right to make its own comments on such appeals.

The army in India was divided into three independent commands, Bengal, Bombay and Madras. Irreguiar forces outside these commands had been raised for local purposes in the territories newly conquered. They were officered by officers of the regular commands. Contingents of Indian troops officered by Europeans were stationed inside the various Indian states and formed an additional source of military strength. The Commander-in-Chief of the Bengal Army was the Commander-in-Cheif of India as well and superseded the local commander-in-chief whenever he happened to go to a presidency. For political and military purposes unity of the Indian army was thus secured.

All authority in the army was centralized. The privates could petition the Commander-in-Chief for any grievance of theirs. Promotion was by seniority. The lieutenant-colonels seldom remained in command of the same regiment long enough to understand its men. Abler officers sought promotion and a freer hand in civil employment or in the irregular and contingent armies. Only the unfortunate few were left in the regular regiments.

Indians could not rise above the rank of Subahdars-major who ranked lower than a warrant officer in a British regiment. The regiments were drawn usually from the same castes

and were on that account well knit together. A General Enlistment Act had been passed recently. It was expected that the members of the castes which had hitherto provided recruits to the army would object to its provisions requiring them to serve anywhere in the world. Members of the other castes then would have been recruited. This seemed to threaten the solidarity of the caste regiments. Indian soldiers far outnumbered the European troops in India. They were proud of the part they had played in the service of the Company whose triumphs on the field they mostly ascribed to themselves.

Laws were made by the Governor--General in Council with the help of legislative councillors introduced recently. A sort of legislaure had come into being in which the central executive was pitted against the additional legislative members. The four provincial representatives were stationed at the capital as permanent civil servants performing the duties of legislative councillors. The two judges had their official duties to perform and were available for law-making only when law-making was taken in hand. Yet these three elements mixed ill together. One hundred and thirty six standing orders governed the course of business in this 'legislature' of 12 members. They played at being a petty House of Commons; not confining themselves to the making of laws, they demanded the laying of papers about non-legislative business on the table of the House and questioned the executive about its policy. But between them they did not know much about real India. The servicewallahs had built a world of their own in which there was no room for any contact with Indians. The large addition of territory to British India was taken as a sign of Indian degeneracy and it was held that no good would be served by British attempts at understanding them. It was believed that all questions could be solved by the light of adequate information and experience in government offices.

From the point of view of the provinces the system was not working well. The provincial government could send their own suggestions to the central government which was bound to consider them. No law could be passed affecting a province unless its legislative councillor was present. But Bengal predominated the scene. Nine of the twelve members of the council for making laws hailed from Bengal. Bombay and Madras therefore could seldom be persuaded that they would get a fair deal from Bengal. The population, administration and resources of the three provinces differed. There was violent outbreak of temper some times. Naturally Bombay and Madras did not like playing the second fiddle to Bengal.

For the administration of justice there were three Supreme Courts at Bombay, Calcutta and Madras. They consisted of a Chief Justice and two judges each. They administered English law or such Indian law as was made applicable to the British subjects in India. Indians in the presidency towns were subject to these courts. To judge from Macaulay's minute of 1838 they were not serving any useful purpose so far as Indians were concerned. 'At Madras', he wrote, 'the Supreme Court has beggared every rich native within its jurisdiction, and is inactive for want of somebody to ruin. In Bengal, 'officers of the court were enabled to accumulate in a few years, out of the substance of ruined suitors, large fortunes.' Intended originally to protect Indians against the servants of the East India Company, these courts had degenerated into tools of racial discrimination and superiority. The British subjects of the Crown could be prosecuted only in the courts set up at presidency towns. The Supreme Courts acted as the highest courts of appeal in India for such cases. This system practically denied justice to an Indian in a case against Europeans. In criminal matters, Englishmen and Indians were subject to different courts and to a different procedure.

Another English court that decided Indian cases existed outside India. Both from the Supreme Courts and from the appellate civil and criminal courts of the Company, appeals lay to the Privy Council when the value of the suit was £ 500 or where special leave to appeal had been obtained. The Privy Council had succeeded to this appellate jurisdiction, originally vested in the King's Court in 1813. Not many appeals were taken to England.

The Company had its own sets of courts in all the provinces. In Bengal, North Western Province, Bombay and Madras there were Sadar Diwani Adalats and Sadar Fojdari Adalats sitting in appeal over the lower courts. Below them were the district and sessions courts in every 'judicial district.' The same officers filled both the offices, heard criminal cases of serious nature and decided civil suits beyond a certain limit. They sat in appeal on the decision of the lower civil and criminal courts. The collector-magistrates were the head of the magistracy in the districts and heard all cases concerning rent and rights in land though cases could be lodged in the civil courts as well with regard to these matters. In most of the districts there were Assistant Sessions or Assistant District Judges as well. Besides the European magistrates and judges, there were Indian registrars, magistrates, Sadar Ameens, Ameens and Munsifs.

Relations with the Indian states were regulated through Agents to the Governor-General, residents and the provincial governments. There was a political department of the Government of India which controlled all the states. At this time, Nepal, Bhutan, Afghanistan and Kashmir were the only independent states on Indian borders in friendly relations with the British. Penetration into Baluchistan had begun and the Khan of Kalat was already a British bondsman. The British Indian authorities differentiated between the states of two kinds, protected allies and subordinate states. The latter were

subject to 'the doctrine of lapse' and could be annexed to British India if a ruler had no male heir and had failed to secure the permission of the East India Company for adopting a son and successor. The British had recognized and created quite a large number of estates and chieftainships in various parts of India. Some of these were very petty.

Such was the organization of Indian Government when the Mutiny broke out in 1857. As we have seen already, the government was ill-informed about Indian opinion, its army suffered from serious defects and the system of justice entailed a dual allegiance which did not work well. The Mutiny turned the light of full publicity on some of these glaring defects with the result that the Company disappeared from the scene and thus the farce of a double government in India ended without much lamentation.

CHAPTER IX

TRANSFER TO THE CROWN
THE GOVT. OF INDIA ACT, 1858

The Mutiny of the Bengal army and revolt of some of the deposed Indian princes in 1857 came handy to Parliament for putting an end to the East India Company. The Crown now formally and directly assumed the Government of India thus terminating some of the fictions and myths of the Indian Government.

The instrument of transfer was mainly the Government of India Act, 1858. The Queen's Proclamation of 1858, though it had no legal validity, made certain announcements of British policy consequent upon the transfer. The Indian High Court Act, the Indian Councils Act and the Indian Civil Services Act and an Indian Army Act all enacted in 1861 completed the process of transfer and solved some of the problems raised by the Mutiny. It would be best to consider here first the Government of India Act, 1858, which mainly dealt with the direction of Indian affairs in England.

In place of the President of the Board of Control, a Secretary of State was vested with the power to superintend, direct and control Indian affairs. He sat in Parliament and was assisted by a Parliamentary Under-Secretary. The India House establishment and records were now amalgamated with those of the Board of Control to form the India Office under an Under-Secretary drawn from among the civil servants. The Secretary of State was a Cabinet Minister but neither his own salary nor that of his establishment was voted by Parliament, it remained charged to the revenues of India. Laws for India were mostly made in India. Hence the dependence of the

Secretary of State on Parliament was not as great as that of other Ministers nor was Parliamentary interest in India as great as in other spheres of administration. The expenditure in other departments was voted by Parliament. In India it was authorized by a resolution of the Governor-General in Council. Parliament was not willing to surrender its power in favour of such a distant agency. A council of expert permanent civil servants—the India Council—was created in England to which the responsibility of sanctioning Indian expenditure was transferred on behalf of Parliament. The Secretary of State in Council himself spent one fifth of the Indian revenues in the home charges paid in England. These included payment of interest, salaries, pensions and gratuities to the Indian servants of the Company and the Crown, the capitation charges for the recruitment of the European element of the army and the price of military and other stores purchased in England. All the sterling loans were raised and the exchange and currency of India managed by the Secretary of State. No moneys could be spent out of Indian revenues without the consent of a majority of the India Council. The control of the civil and military servants of the Crown was also vested in the India Council. It made appointments to the councils of the Governor-General and the Governors. The Secretary of State could discuss other matters with it as well, but there its opinion was not binding. The initiative lay with him. He could send secret and urgent orders to the Governments of India without confiding them to the members of the Council. For more convenient transaction of business, the members were sub-divided into sub-committees in charge of various departments, revenue, political, foreign and currency. The Council met twice a week. The Secretary of State appointed one of the members as vice-president to preside in his absence. Proceedings of such meetings required his approval.

The India Council consisted of 15 members, 8 appointed

by the Crown and 7 elected by the expiring Court of Directors. They held office during good behaviour and were thus irremovable except by resignation or death. In case of a vacancy among the members elected by the Directors, the Council was to elect the new member. The Crown filled the vacancies among its own nominees. The members were paid £1,500 a year and were entitled to a pension on retirement. Ten of these members were to possess Indian experience of at least 10 years service which should not have terminated more than ten years before their appointment.

The Council was thus a body of permanent civil servants chosen for their knowledge of Indian administration to safeguard Indian revenues against inroads by a British Secretary of State. The Indian Civil Service was the first body of civil servants recruited by public competition. Patronage was still rife in England. The India Council was to secure that there was no tampering with this 'finest of administrative services' for political reasons. Changes of governments in England were to leave the Council unaffected. A Secretary of State could not hope to fill in the ordinary course of things more than one vacancy among the nominees of the Crown. It was hoped that the Secretary of State would be guided in most matters by the majority of his Council. Indian Government was not a subject of party politics. The Secretary of State could take shelter behind the majority of his Council against any demands of his colleagues thought unreasonable by him. The Council was a bureaucratic body deriving its strength from the personal reputation of its members but not able to fall back upon any ultimate sanctions. It was not a cabinet of the Secretary of State because it lacked the unity and homoegeneity of opinion which such bodies possessed in the U.S.A. and England.

The Act is said to have transferred the Government of India to the hands of Parliament. During the past century

Parliament had always resented being shut out of Indian administration. It had made up for its lack of continuous control by intensive study and report once in every 20 years, if not oftener. Now it acquired full formal and legal control over Indian affairs. Questions on Indian administration could be asked of the Secretary of State, resolutions could be moved, Indian affairs could be discussed at daily adjournments or at the time of rising for the Parliamentary recess. Bills could be introduced and votes of confidence moved. When the Secretary of State presented the audit report on Indian revenues spent in England, the scrutiny thereof could roam all over the field of Indian administration. Every year the Secretary of State presented to the Commons a report on the moral and material progress of India when Indian affairs could be discussed. Rules and regulations made in India or by the Secretary of State under authority delegated by Parliament were laid on the table. Their presentation could provide occasions for a discussion of Indian affairs. Similar opportunities were available in the Lords as well. But 'we have the paradox that Parliament ceased to assert control at the very moment it had acquired it.' It seems that the non-recognition of Parliament's control over India had irked Parliament more than anything else and when once its control was conceded, it lost interest in exercising it in practice. The earlier existence of the Board of Directors as an independent body outside Parliamentary control had spurred Parliament in the past to assert its authority whenever it was in a mood to do so. The vesting of political authority for a limited period in the East India Company was usually taken as a contract. During its pendency no interference was ordinarily attempted. As the time for the renewal of the contract came, a thorough investigation into the affairs of the Company was undertaken either for finding fault in its handling of the administration or for justifying the changes to be proposed in the new contract. It was

little realized that the British Government of the day had been, since 1784, playing the more dominant part in the direction of Indian affairs. Now and then things had happened which had justified the association, in the popular mind, of the Government of India with the East India Company . The quarrel between the representative of the Company and the Crown about the Afghan policy and the recall of Ellenborough are two glaring examples.

But when after the Mutiny the control of Indian affairs was placed in the hands of a Minister answerable to it, Parliament stood appeased. It seemed that this was what it had been fighting for all along and having gained in principle, it neglected its avowed intention of holding a continuous inquisition over the Government of India. It has further to be remembered that the Secretaries of State after the transfer were far abler men than their predecessors at the Board of Control. The emergence of swifter means of communication between England and India, and also between different parts of India, made Indian news available in England much more swiftly than had been the case so far. Parliament was content to leave the Secretary of State alone leaving him to act on their behalf. The Secretaries amply fulfilled its expectations. Their supervision of Indian affairs was more continuous and sustained, though their interference in Indian affairs might not have been substantially greater. As a matter of fact, from 1857 to 1915 British politicians and parties were engrossed in other affairs of their own and had little inclination to study Indian problems. Except occasionally, Indian affairs were treated as a non-party subject. This meant that both the political parties neglected to educate public opinion on Indian questions as not much political capital could be made out of the presentation of their own or their opponents' handling of Indian administration. Gladstone developed a Liberal policy towards India as opposed to a Conservative one and

India then figured in the squabbles of British party politics. But, when in office he proceeded to retrace his tracks in the opposition, even this exception proved that Indian affairs were best kept out of party politics. Those who devoted themselves to a study of the subject soon discovered that whereas the study was definitely unremunerative, the intricacy and vastness of the problems made it hardly worthwhile to pursue it even as a scientific hobby. The competitive public examinations drew the best of English administrative talent to the Indian Civil Service. There were unlimited opportunities for service and influence and power here. It was much better paid. One could much more easily make a name for oneself in one's chosen field of life here than elsewhere. Having ordered the flower of English intellect into exile in India, it was felt it would be ungenerous to pry too much into their conduct. Thus developed the theory of trusting the man on the spot and supporting him. If any questions were asked, the Secretary of State would back the Governor-General who would support the provincial government which in its turn would be backing its collector or a departmental head on the spot. Members of Parliament soon learnt that nothing was to be gained by poking one's nose into Indian affairs. Thus parliamentary interest in India was neither continuous nor sustained. This led to the British failure 'in the face of growing nationalist feeling in India, to think out and work out a policy of continuous advance before 1917.'

The Secretary of State in Council laid down certain directions in order to guide the Government of India in its dealings with England. All projects of legislations, all measures affecting the revenues and in particular the customs, currency and exchange, construction of public works and railways, the creation of new appointments, grants to local Governments, loans to Indian states, mining leases and other concessions, addition to military expenditure, the raising of the pay of the

old appointments and the revision of certain establishments, any question of policy or any problems involving new expenditure on a large scale were rigidly scrutinized and controlled by the Secretary of State. In the absence of popular control of the government in India, it was considered right that the Govern- of India should be answerable to Parliament's responsible minister who should in his own turn exercise conscientiously the power which Parliament had entrusted to him.

Queen Victoria in her proclamation to the princes and peoples of India referred to the Governor-General as 'our Viceroy.' The term stuck though there is no legal authority for its use. Queen Victoria had been corresponding with Governors-General before the transfer and that she or her sucessors continued doing so did not make the office in any way *Viceregal*. The office of viceroy existed in Ireland, but the holder therof always acted under the orders of his political chief, the Chief Secretary for Ireland. So though some Governors-General tried to appeal against the Secretary of State to the Crown and were joined by their councils as well in their protests, the issue was never in doubt. India was a *subordinate* department of the *British* Government. No mock ceremonial or fiction could vest in her chief executive in India the right to call in question seriously the wisdom of the policy adopted by the British Cabinet towards India.

Parliamentary interest in India after 1857 became limited to the passage of Acts dealing with the Indian Constitution, Imperial interests in India, and extra territorial matters—questions on which uniformity of legislation was needed. It sanctioned the raising of sterling loans and the employment of the Army in India outside the country at the cost of the Indian exchequer. The presentation of the report on the moral and material progress in India usually took place two years after the period dealt with therein. It was sometimes difficult to find enough members to keep a quorum during its discussion.

The opposition and the independent members did not much affect the course of Indian administration. Bradlaugh's resolution on simultaneous examinations for the Civil Service in India and England, though carried in the Commons, was quietly ignored. Gladstone in opposition, however, succeeded in getting elections to the Indian legislatures introduced in the Indian Councils Act of 1892.

Designed admirably to protect Indian revenues as some of these rules were, they came to be used occasionally to promote the interest of British stockholders in India ; the exchange policy became a crying scandal ; the capitation charges in the military budget were no less so. The stifling of Indian industries through free trade in India till 1921 was equally calamitous.

CHAPTER X

THE SECRETARY OF STATE IN COUNCIL TILL 1919

The India Council had been created in order to act as a check on the Secretary of State for India. It was a body of permanent officials who were expected not to sacrifice their convictions to exigencies of party politics. Its creation saw a new experiment in carrying on parliamentary Government. It soon became clear that an irremovable official body having important statutory functions could not well agree with a parliamentary chief who was member of the cabinet and thus responsible to his own party, his cabinet colleagues and above all to the House of Commons. Parliamentary sovereignty went ill with an independent statutory body.

The inevitable result followed. The Secretary of State had only to mark a despatch 'urgent' or 'secret' to justify his sending it without the knowledge of his colleagues of the India Council. There was no restriction on what he could do through such a despatch. It could involve expenditure in India, it could even change the conditions of service of the Civil Servants. Of course it was presumed that when a Secretary of State did so, he did it with the consultation, if not the active concurrence, of his cabinet colleagues. When subsequently proposals for expenditure were laid before the Council, it could not well rescind the orders of its chief. The Secretary of State could always claim to speak on behalf of the British people. The majority of the Council, if it opposed him, had no such backing. In a democratic era this rendered the India Council an inferior body.

This change soon found its expression in the organization and constitution of the Council. Before the first vacancies occurred, it was laid down in 1869 that its members would hold office for ten years only and the vacancies among its members would be filled, not by election by the Council, but by the Secretary of State. The Council also lost the right of making appointments of the members of the Councils in India. In 1876 power was given to appoint 3 members for life who need not have any experience of Indian administration or public life. This power has been used for the appointment of English lawyers and financiers. In 1889 the number of members was reduced to ten. In 1907, the tenure was reduced to seven years. The total number of members was reduced to between ten and fourteen. The salary was reduced now to £1,000 a year. No one could be appointed a member whose Indian experience had terminated more than 5 years before the time of his appointment. The Secretary of State was empowered to reappoint a retiring member for a further term of five years. Thus if a member proved himself useful to a Secretary of State he could look forward to another five years' tenure in office . Lord Morley who was the Secretary of State at the time had the rare imagination to appoint two Indians to his Council in 1908. The reduced tenure, the right of the Secretary of State to reappointment and the flexibility in the number of the members gave the Secretary of State great authority in the Council.

The members of the India Council were appointed from among the retired civil and military servants of the Crown. Admirable as the careers of most of them had been as administrators, by the time they were appointed to the Council they had lost touch with Indian aspirations. Few of them had ever looked with sympathy at the national awakening in India during their tenure of office in the country. Back in England they became guardians of vested service interests. As the earlier demands

of an awakened India had taken the form of a greater share in the higher administrative jobs in India, till then in the hands of Europeans, it was useless to hope that the European members of the services finding a place in the Secretary of State's council would support Indian demands. When two Indians were appointed to the Council, they could hardly affect the decisions arrived at by the Council. Discussions in the council did become a little different on account of their presence at the council table. Later on the presence of two Indians was counteracted by the appointment of more conservative Europeans in order to keep the balance. As Mr. Montague said in 1917, the whole system of India office was designed to prevent control by the House of Commons for fear that a Secretary of State may be too liberal in his views.

The India Council thus gradually came to occupy with regard to the Secretary of State a position somewhat similar to that which the Court of Directors had occupied in their relations with the President of the Board of Control. In some matters at least the members were at a disadvantage. They did not exercise any patronage though they formed the highest court of appeal for members of the services aggrieved by any action of the authorities in India. They could neither go to law against the Secretary of State, as the Directors had done, nor could they take an independent action on their own. They had no monopoly of expert information. The records were now equally, if not more so, at the disposal of the Secretary of State. Further all the despatches from India were now addressed to him. He passed them on to the members when he had formulated his views on them with the help of the Permanent Under-Secretary or his assistant in the India Office.. All orders from England were communicated to the Government of India on his behalf. Opening of telegraphic communications made personal exchange of views possible between the Secretary and the Governor-General. The

direction of affairs from England now became direction by the Secretary of State.

The Council was divided into six committees dealing with matters judicial, financial, military, revenue, political and public works. Each member served on two committees and occasionally found himself transferred from one department to another. Every department had a secretary from the premanent services at its head. When an order was to be sent to India, the permanent secretary prepared a draft and submitted it to the Secretary of State who amended it or ordered it be altered or otherwise modified. After his approval the draft was sent to the members of the council dealing with the department. They did not as a committee of the Council command the services of a secretary or assistant of their own. The committee therefore was seldom able to give any alternative directions though it did often offer objections and some times even obstruction. The opinion of the committee was again then put up before the Secretary of State who took appropriate action thereon. The draft in its new form was again put up before the committee. After it had approved it, all the papers were made available to the other members of the Council not on the committee. This done, a meeting was called where the draft was formally passed and ready for despatch to India.

The position of the members worsened a little on account of the fact that the secretaries of the various departments soon came to be recruited from among the same class of men from which the members came. Very often they had a more distinguished career in India than most of the members of the India Council. Their experience of Indian administration was more recent than that of the members. Naturally the Secretary of State placed more reliance on their opinion than on that of the members of the India Council.

The plying of weekly service of steamships between Eng-

land and India through the Suez, the establishment of telegraphs, the large investment of the British capital in India and the growth of Indian business in England led to more frequent exchange of views between India and England. Whereas before the opening of the Suez and the development of telegraphic communication, it took two years for Indian despatch to be answered, it was now a matter of a couple of days. Naturally the Government of India could no longer present its policy as a *fait accompli*; it had to consult the British Government beforehand. This curtailed the number of cases in which the Government of India could pass orders on its own. But the Secretary of State usually approved the course of action suggested by the Government of India. Some times the Government of India flattered the Secretary of State by sending a larger number of cases to him than was necessary, thus keeping him in good humour. Some Secretaries of State, even when embarking on a course of action all their own, would like—as Lord Morley did over Morley-Minto reforms—the initiative to be taken in India. Of course the foreign policy of Indian Government was directed from England though even here a Curzon could create a situation in which the British Government was left little choice. The fiscal policy of the Government was kept tied up to the doctrine of free trade even when a Governor-General resigned in protest. Curiously enough in buying stores in England, the doctrine of free trade was given the go by and preference was shown to British manufacturers despite the continuous and sustained protests from the Government of India. Indian monetary policy again was similarly conducted. But the Government of India soon accustomed itself to be overruled in these matters and was content to carry on the rest of the Indian administration almost independently. Whenever it was content to tread upon the beaten path, the Home Government could point out no wolves on the road. But the Secretary of State's sanction was required

for reducing or increasing taxation. Departures in currency policy, raising of loans, construction of public works by borrowing when costing more than Rs. 12,50,000, expenditure on construction of all but the minor branch railway lines, creation of any appointment carrying a salary of Rs. 500 a month, increasing the salary of an appointment to more than Rs 9,000 a year, additional expenditure over an establishment by more than Rs. 5,000 a year, creation of a temporary appointment with a salary of Rs 500 a month for more than two years, the incurring of any expenditure not provided for under the existing rules, loans to Indian states beyond Rs. 5,00,000, expenditure on state ceremonies or entertainments at public cost exceeding Rs. 1,00,000, political pensions of Rs. 1,000 a year and above, grants to religious or charitable institutions of more than Rs. 10,000 a year or Rs. 50,000 in a lump sum and increases in military expenditure were subject to the Secretary of State's sanction. These limitations on expenditure controlled administrative policy automatically. Rules and Regulations for filling additional seats in the provincial and central legislatures also required his approval.

The Cabinet, Parliament, the India Council, the India Office and the Secretary of State formed five instruments through which the English people could exhibit their interest in India. Of these the India Office under the Secretary of State was most active. Lord Morley had his way about the appointment of an Indian to the Council of the Governor-General in India even when all other elements were combined in opposition against him. Indeed Lord Minto, the Governor-General under him, complained that he was interfering too much in the details of Indian administration. He ignored both his own council and that of the Governor-General. He corresponded with any official in India as he pleased. In doing so he did not exceed the limits of the power vested in him as the Secretary of State . Rather curiously, the national awakening in India

made it easier for the Secretary of State to understand the situation in India. The Government of India was usually too busy concentrating on how best to combat the national movement in India to be able to understand it. The doctrine of trusting the men on the spot failed because the men were out of sympathy with the events they were being called upon to control.

In 1914 Lord Crew tried to reform the India office. He admitted that the Council greatly strengthened the position of the Secretary of State in dealing with the Government of India. It also obliged the Secretary to bring his proposals in a more compact, concrete and concentrated form so that they could withstand the scrutiny of the Council. The bill he introduced would have made the Council a better instrument in the hands of the Secretary. It was defeated in the Lords where Curzon condemned it as reducing the India Council to a costly and impotent sham.

The Council could be easily ignored as was proved when the Mesopotamia expedition was sent and directed all through its disastrous course by the Secretary of State alone. The wide use of private telegrams made the direction of Indian affairs from England a one man's affair.

For most of this period the Council served as a useful instrument in helping the Secretary of State to direct Indian affairs. But the rising tide of Indian nationalism turned it into a bulwark of conservatism if not reaction. Its help was seldom sought in matters of policy.

CHAPTER XI

THE GOVERNOR-GENERAL IN COUNCIL
1858 to 1919

When in 1858 the Government of India was transferred to the Crown, the Governor-General in Council consisted of the Governor-General, two senior civilian servants of the Crown, one senior military officer and a lawyer. The Commander-in Chief was an extra-ordinary member of the Council. Their authority was collegiate. Though the Government of India was split into several departments, each under a secretary of its own, the members of the Council acted all together as a Board. Canning found this method of doing business very cumbersome and at one time suggested that the Council be abolished and the Governor-General left to carry on the administration with the help of the departmental secretaries alone. But when he divided the work of the administration among the various members, he found it working better and was thereupon persuaded to change his opinion. The Indian Councils Act of 1861 left the Government of India vested in the Governor-General in Council giving the Governor-General the right to frame rules for transacting business. Any action taken under those rules was to be taken as done by the Governor-General in Council. The number of members was now raised to 5; three had service qualifications, one was a lawyer, the qualifications of the fifth member were not prescribed but it was intended to take a financial expert from England for the post. The Rules made enabled the Governor-General to allot to every member one of the departments in the Indian Secretariat. The member-in-charge of a department disposed of the routine and unimportant cases by his own authority

reporting the action taken by him to the Governor-General in the weekly statements to be submitted to him. Every week the member and the secretary of the department saw the Governor-General. At these meetings they discussed the progress of business in their departments and after such discussions orders on some more 'cases' might be issued. When a member overruled his secretary or a local government, when there was a difference of opinion between two departments, when the Governor-General did not approve of the action proposed to be taken in a department, or when a question of policy was involved or a despatch to the Secretary of State had to be sent, the matter was placed before the full Council and decided by a vote of the majority. The Governor-General could overrule a majority of the Council. A member dissenting from the view of the majority and any two members out of the majority when it was overruled by the Governor-General could write a note of dissent and insist that it be sent to the Secretary of State along with the official decision of the Governor-General in Council. Thus the Government of India underwent a great change. Instead of a collegiate government.presided over by the Governor-General who initiated all the business and who issued orders directly to the secretaries of all departments, business now came to be carried on in separate departments. The members became experts entrusted with the running of their own departments primarily.

Under the new system the Governor-General took the foreign and political departments under his control. The other members held charge of the finance, legislative, army, home, and revenue and agriculture departments. The members were administrators rather than councillors. Though all orders of the Government were issued under the authority of the Governor-General in Council over the signature of the secretary of the department to which the matter related, they were not often the result of the joint decision taken by the entire council.

Only major matters were brought before the full council. But the published orders made no distinction between the orders issued by a member on his own and orders proceeding from decisions made in the Council.

But sometimes the Governor-General left for tour outside Calcutta without his Council. This created two Governments of India. Before the Governor-General left on tour, the Governor-General in Council would appoint the seniormost of the members to preside at the meetings of the Council in the Governor-General's absence from the capital. In such cases both the Governor-General and the rest of the Council functioned independently as a Government of India. Usually matters coming up for decision from Bengal, Madras and Bombay were decided at Calcutta and the others by the Goveror-General who was often accompanied by the secretaries of foreign, military and public works departments. This did not work well. If any matter that came before the President-in-Council assumed the least importance it was sent on to the Governor-General. The severance of the Governor-General from the Council dislocated the whole machinery. The Council would send papers to the Governor-General who would refer them back to the Council. Sir Henry Maine who worked under this arrangement declared that it was impossible for any human arrangements to have worked more perversely. "A great deal of work was done twice over and a great deal was not done at all."

This state of things was put an end to when Lord Lawrence started taking his council with him to Simla during the summer. Ripon made Simla the permanent summer headquarters of the Government and thus this double Government finally came to an end.

A new member was added to the Council in 1874 to hold charge of public works department. In 1904 this was converted into a member in charge of the Commerce department.

The army department was under the Army member. The Commander-in-chief presided over the Army Headquarters. As he was only an extra-ordinary member specially appointed to the Council, all proposals concerning the army were submitted by him to the army department. The army member was a military officer, of course, junior in rank to the Commander-in-Chief. For long the system worked well. But Lord Curzon seemed to have used the Army member as a counterpoise against the Commander-in-Chief. He argued that it was necessary for the Government of India to have a second expert opinion on the military proposals of the Commander-in-Chief. When Lord Kitchner became the Commander-in-Chief he resented having his proposals noted upon and presented to the Council by a junior military officer. Some friction between the army headquarters and the army secretariat developed. The Conservative government in England found it difficult to side openly with the one or the other of the protagonists. It assured Kitchner that the military member would become the member for military supplies and told Curzon that he would have a second military expert to advise him in the Council. When the vacancy in office occurred soon after, the Secretary of State ignored Curzon's demand for the appointment of an eminent soldier as a military member and appointed an officer of the usual calibre. Curzon resigned in disgust. The home government had really been in favour of entrusting the Commander-in-Chief with the army department. In 1909 when the office became vacant, no army member was appointed ; the department was transferred to the Commander-in-Chief. A civilian member in charge of Labour and Industries was appointed and the total number of ordinary members remained six.

Until 1868 the Secretary of State appointed the law member on behalf of the Crown. The three service members and the the finance members were appointed by Indian Council by a majority vote. In 1869, the appoint-

ment of all the members was placed on an equal footing, all being appointed by Secretary of State on behalf of the Crown. The service members were usually appointed by the Secretary of State after consultation with the Governor-General who submitted names. Very often the Governor-General's nominees were appointed ; sometimes, as in 1904, the Secretary of State made an appointment on his own. Lord Morley ignored the recommendations of the Governor-General in order to liberalize the Council. He succeeded in securing the assent of Lord Minto to the principle of appointing an Indian to the council and carried the appointment through against the disapproval of the Prime Minister, the Cabinet, the House of Lords and the king. It was supposed to be a revolutionary change because, among other things, it brought the affairs of even the princes under the consideration of an Indian commoner. When the lunch to which the Indian member invited the Maharaja of Bikaner, the most conservative of Indian princes, went off well, official Simla heaved a sigh of relief.

In 1919 the work of the Government of India stood divided in the following eight departments each under a member : 1. Foreign and political ; 2. Army. ; 3. Home ; 4. Finance ; 5. Legislative; 6. Commerce and industries; 7. Revenue and Agriculture.; 8. Education.

The division of work among the members increased the authority and powers of both the Governor-General and the members. Instead of their sharing responsibility for every act of the government collectively, every member had a compact volume of business under his control in his department. Not only did he enjoy the power of settling most of the business therein on his own ; in other matters as well the initiative lay with him. Even when a matter went to the Council, other members, though they might discuss it threadbare, usually left it to the Governor-General and the member in charge of

the department to settle it between themselves. A sort of gentleman's agreement followed by which usually each member was left to control his own department. The members decided important questions jointly even to the length of opposing the Governor-General's declared views on the matter. In the nineteenth century on several such occasions the Council served as a guardian of Indian interest against the policy which the Secretary of State and the Viceroy were forcing on the country. But in curbing the nascent textile Industry in India and in embarking upon the useless adventure of the Second Afghan War, the Governor-General had his own way against the protests of the Council. This was made possible by an Act of 1870 which allowed the Governor-General to overrule his Council even in taxation. Usually the Governors-General were apt to be guided by the expert opinion of their councillors who knew the country well. Almost every Governor-General when he assumed office had some pet scheme of his. During his tenure of office he tried to carry it out. His own views were necessarily modified by the practical consideration which his colleagues in the Council put forward. As he kept himself informed about the progress of work in every department, he could accelerate the speed of administration if he felt so inclined. His weekly interviews were informal matters; the member in charge did not have to defend his position before an audience, the suggestions he received were not always recorded as coming from the Governor-General. The member could, if he chose, put those views forward as his own. Thus more influence was exercised by the Governor-General in these informal meetings than in the formal atmosphere of the Council chamber. The initiative in the Council always lay with him. He alone framed the agenda of the Council and could thus always prevent or at any rate delay a decision being arrived at against his own opinion. He was relieved of the responsibility for the mass of trivial matters which used to litter the

Council chamber before 1861. He was thus free to exercise more thoroughly a general control over the entire administration. He directed the foreign policy of India as a mouthpiece of the British Government, though sometimes, as in the case of Lord Northbrook, a Governor-General might refuse to carry out a policy—in his case the stationing of an English representative at the court of Afghanistan—with which he did not agree. He was responsible for the welfare of one fourth of the Indian population living in the Indian States whom he controlled through the political department. Most of the higher appointments in the civil services of the Crown required either his concurrence or his nomination. He appointed the chief Commissioners, Lieutenant Governors, Additional Judges of the High Court, Judges of the Chief Courts and the Judicial Commissioner's Court. He recommended the names of the Judges of the High Courts from India. He appointed one of the Judges to officiate as Chief Justice during the absence from duty of the Chief Justice. His power of patronage was vast. He conferred Indian titles and made recommendations about the grant of British honours. He granted pardon to offenders, on behalf of the King.

In the twentieth century the relations between the Council and the Governor-General changed. Whereas the Council had guarded Indian interests so far, now the role was reversed. As the national awakening in the wake of the partition of Bengal spread, the attitude of the members of the Council stiffened. They continued to function as successful bureaucrats though even here Lord Curzon inflicted some hard shocks on them. He demonstrated that a politician, as the Governor-General undoubtedly was, could, when he was so minded, teach even the bureaucrats how to run bureaucracy successfully. But the Council failed to function as a useful agency for meeting the Indian situation successfully. It looked upon demands for larger association of Indians in the administration as a slur on

the all-white composition of the higher administrative services. It construed the introduction of the representative government in India as a vote of censure on the previous system. It became rapidly conservative if not reactionary. Most of the reforms in Indian administration came from the Governors-General, if not the Secretary of State.

It has been said that the Governor-General seldom used his power of overriding his Council. It was not because he always accepted the decision of the Council but because occasions for differences were few and far between. Usually a Governor-General would take some time learning his job when he came to it. He would be prone to accept the advice of his bureaucratic advisers in Council. It was they who were to defend his policy in the legislature. In their turn they knew their own limitations. They were not politicians with a set programme. If they had learnt to command, they had also learnt to obey. The Secretary of State laid down in 1886 that when they were overruled they could not make their differences with the Governor-General in Council public. They should not only stand behind the official decision of the Council, but defend it as well. Seldom did a member by his dissident voice deflect the orderly progress of Indian administration. The only case on record is that of Sir Sankaran Nair whose notes of dissent on constitutional proposals in 1918 influenced the British Government's proposals to a larger extent than did the official comments of the rest of the Council. Till 1904 the seniormost civilian member of the Council officiated in the absence or the indisposition of the Governor-General. Now that two non-service members were included in the Council it was thought desirable to change this practice. It was now laid down that the seniormost Governor should officiate for the Governor-General.

The Governor-General and the members of the Council were members of the legislature as well. The laws passed by the

central legislature during this period were almost entirely their work. The standing orders under which the Legislature worked were framed by the Governor-General in Council. The Law Member presided over the legislative department where all the official bills were drafted and non-official bills scrutinized. The secretary of the legislative departments was also the secretary of the Council. Questions and resolutions had first to be admitted by the President. This was done in the legislative department. The Governor-General was the *ex-officio* President. As such he decided points of order raised during the course of the debate and when in 1910 supplementary questions began to be asked he decided their admissibility on the spot. Questions, bills, and after 1910, resolutions regarding finance, foreign affairs, relations with the states, religious beliefs and customs of the people and the army were admitted with his previous approval. He was his own whip and issued instructions about the way in which official and nominated non-official members were to vote. Some time he addressed the house as well or intervened in a debate in the legislature —not always with credit to himself, as Lord Curzon discovered in the debates on the Official Secrets Bill.

The Government of India during this period was unitary and not federal. The division of India into provinces was but a convenience. It did not mean any division of constitutional power. For everything happening in India, the Government of India was ultimately responsible. This responsibility was exercised in various ways. The provincial governments enjoyed only such authority as the central government was content to delegate to them. Just as the Government of India was required to obey the orders of the Secretary of State, so were the provincial governments under obligation to act on the orders of the central government in India The control of the central government on the provincial government was tighter than that of the Secretary of State on the Governor-General in Council.

The Government of India was almost as much on the spot as the provincial governments and could be more successfully and easily moved to intervene by interested parties.

All bills passed by the local legislatures established under the Indian Councils Act of 1861 required the assent of the Governor-General. The assent was not a formal affair. It could be withheld—and was so withheld in the case of the Punjab Colonies Estates Bill of 1907—on administrative and political grounds, even when the bill had received the approval of the Government of India before its introduction. Drafts of all official bills were submitted for previous approval by the provincial governments and were thoroughly scrutinized in the appropriate departments before such approval was granted. Non-official bills concerning all India matters required the assent of the Governor-General as did the questions and resolutions on the same subjects.

Furthermore we find that the Government of India passed laws in their legislative council on all kinds of matters which might have been dealt with by Provincial legislature—after 1861—but which were far better handled on uniform lines. Crime, personal laws of the citizens, contract, trust, specific relief, transfer of property, easements, arbitration, patents, trade marks, weights and measures, securities, insurance, companies, insolvency, usury, forests, mines, factories, boilers, electricity, explosives, labour problems, breaches of contract, emigration, poisons, leprosy, lunacy, vaccination, epidemics, religious endowments, charitable societies, amusements, motor vehicles, and ancient monuments, among others, formed the pre-occupation of the central government rather than that of the provincial governments.

The financial deconcentration that followed the Indian Councils Act of 1861 left the powers of the central government largely intact. The fiscal grants to provincial Governments for certain provincial services initiated by Lord Mayo

were made from year to year and thus continued the central scrutiny of provincial administration. The entrusting to the provincial governments of income from the departments primarily their concern still left the latter dependent on the central government for meeting their deficits. The quinquennial financial settlement of Lord Ripon increased the powers of the provinces. In 1904 the settlement was made quasi-permanent with a view to giving the local governments a more independent position and a more substantial and enduring interest in the management of their finances than had previously been possible. Greater assurance was provided for the financial position of the provinces by the famine insurance scheme of 1912. In 1917 the central government agreed to share expenditure on famine relief with the provinces. Financial devolution did not always lead to greater independence to the financial departments of the provinces. The types of expenditure which in the case of the Government of India required the sanction of the Secretary of State could not be incurred by the provincial governments on their own. They required the approval of both the central government and the India Office. Many of the taxes in the provinces were raised with the authority of the centre. Others required administrative approval of the Governor-General in Council. Provincial governments could raise no loans but had to request the Central Government to finance them. The account codes of various types framed by central government further governed the financial conduct of the provincial governments. The accounts of the moneys spent in the provinces were kept by the central accounts and audit department which also audited the provincial accounts.

The higher posts filled by superior services in the provinces were all filled ultimately with the authority of the Governor-General in Council to whom all civil servants could appeal when they felt aggrieved by the orders of any subordinate authority. The scientific services were organized on an all

India basis in order to pool scientific knowledge and expert resources.

The Government of India from time to time issued resolutions laying down in broad outlines the policy which they desired the provinces to follow in a particular department. Such resolutions could cover all departments. Lord Ripon laid the foundations of local self-government in India by a resolution. Lord Curzon surveyed and defined assessment and collection of land revenue. Commissions of inquiries often heralded the framing of a new policy by the central government.

In law as well as in practice, the provincial governments possessed no powers of their own during this period. They were merely agents of the central government administering the subjects entrusted to them within the limits imposed upon them by the Governor-General in Council. They sent the reports of their activities in all the departments entrusted to them and asked for and received—even when they did not ask for them—instructions in every department of public administration. No detail was too trivial for the Government of India. For one thing, questions in the Indian Legislative Council and Parliament could be asked about every aspect of administration, for another press and political agitation could bring into limelight anything happening anywhere in British India. On such occasions the Governor-General in Council felt that when they shouldered the responsibility for good, bad or indifferent handling of any local situation they should have a say in the matter. Of course, when the central government reversed the decision of a local government or local administration, the matter was brought before a meeting of the Governor-General in Council. But where no official and formal orders as such were passed the member in charge of a central department could undertake to reshape provincial policy. A Shankaran Nair could persuade a provincial government to

withdraw a circular of a divisional inspector of education which had received its own approval. The Government of Bombay tried to reorganize its educational services on a plan of its own only to find that the central government would hear of no such thing. Indeed if the Government of India was a subordinate department of the British Government, the provincial governments in their return were a subordinate department of the Government of India ; or, to put it more bluntly, were subordinate to many departments of the Government of India. Sir George Chesney held that the position of a member of the Governor-General's council was unquestionably more important than that of a provincial Governor or Lieutenant-Governor. The member had a much greater influence on the progress and efficiency of the administration.

CHAPTER XII

INDIAN COUNCILS ACTS
1861 AND 1892

Transfer of Indian administration to the Crown and Parliament in 1858 led to a notable change in the machinery for legislation in India. All laws till then were passed by a legislature which was composed of public servants only. In 1861, the foundations of an Indian legislature were made more broad-bottomed and provincial law making bodies were started afresh. The new legislative authorities started as law-making bodies only, but by 1919 assumed many of the functions, on howsoever humble a scale, of Parliament.

The Indian Councils Act of 1861 reorganized the central legislature on a new basis. The representatives of provincial governments now went back to their provinces. In their place, the central executive was reinforced by the addition of additional members whose number varied between 6 and 12. They were nominated by the Governor-General to hold office for two years. Half of them were non-officials and some of them Indians as well. Their functions were confined to the work of legislation alone. This limitation of their function was due to the fact that the council as constituted under the act of 1853 had demanded the placing, on the table of the house, of the correspondence between the Secretary of State and the Governor-General in Council. It could legislate, as of old, on all subjects, in all things, and concerning all persons—Indian, British or foreigners—and courts in British India and for all British and British Indian subjects and public servants—civil, military and naval—in and outside British India. It could repeal any imperial law passed before 1860 except those defining the organization and

functions of the India Office. It thus possessed greater powers than did the dominion parliaments. The dominion legislatures did not possess the power to repeal Acts of Parliament. Their legislation had no authority beyond their own limits.. But this was so because the dominion parliaments were quasi-sovereign bodies whereas the Indian legislature was a committee of officials suitably inflated to look like a legislature. The power in its hands was never likely to be exercised against the declared wishes of the imperial Parliament.

As under the Act of 1833, Indian Legislative Councils could not set up a court empowered to sentence a European British subject to death, nor could it legislate away the fundamental rights of the British subjects in India. It could not entertain bills affecting the public debts, public revenues, army, political or foreign policy of the government and the religious customs and usages of the people, without the previous permission of the Governor-General.

Procedure in the council followed the parliamentary model. First a notice of the motion for leave to introduce a bill was given. For this purpose copies of the bill were printed with a statement of objects and reasons for the bill. When leave to introduce a measure was granted by Council, it was republished in the Government of India Gazette and the Gazettes of the Provincial Governments in English and provincial languages. Provincial Governments were often asked to submit their views on the subject. This they did and often reinforced their own views by citing those of their district officers and departmental heads. A select committee was then appointed by the legislature to consider these opinions and proposed amendments, if any, to the measure. The select committee made its report to the council when once again the measure was republished and opinion on the recommendations of the Select Committee invited. When these were received the measure was considered clause by clause in the Council.

This completed, there was once again a general discussion on the bill after which it was passed. It was then sent to the Governor-General for his assent. On receiving his assent, it was published as an Act of the central legislature in the Government of India Gazette and republished from there in the various provincial gazettes. Of course the Secretary of State. on behalf of the Crown, could disallow a measure within two years of its coming into force. There is no case on record of this having been done.

The Governor-General was authorized to make laws on his own—Ordinances—valid for six months only. They were as comprehensive in their scope as the laws passed by the Indian Legislature.

The Governments of Bombay, Bengal and Madras were given the right of making laws for the territories under their control. This right was much more limited than that exercised by Bombay and Madras before 1833. Till then all laws for Bombay and Madras were made by their Councils. Now provincial councils could make laws for the province only in the limited field which the Government of India did not choose to occupy. There was no division of subjects between the Indian council and the provincial councils as is the case in federations. There was no decentralization of legislative functions either, but deconcentration. Whatever laws were made by the provincial councils were made with the previous approval of the appropriate department of the Government of India. Before approving the legislative policy of a provincial government, the Government of India could suggest modifications and insist they be incorporated in the proposed bill before it was introduced in the provincial legislature. The provincial government was not at liberty to accept any amendment to the bill at any stage without the previous consent of the Government of India. Even when all these conditions had been fulfilled, the bill was to receive the assent not only of the head of the local govern-

ment but of the Governor-General as well. Thus the Act of 1861 deconcentrated the legislative functions in India without in any way going back to the chaos of the pre-1833 days.

The provincial councils were to consist of not less than 4 and not more than 8 members nominated by the head of the province for two years. Half of these members were to be non-officials. Indians were invariably appointed to some of these seats. As at the centre, the councils were to consider legislative projects placed before them by the government.

The legislative councils now set up were not legislatures either in their organization or their functions. Each council was a committee by means of which the executive government obtained advice and assistance in legislation. The laws made were indeed the orders of the Government. But once made they bound their authors—the executive governments—as much as the public. They were enforced by the courts against the public as well as the executive. The procedure was intended to prevent its being said, as was done during the Mutiny, that the Government harboured any designs against either the religious beliefs or usages of the people. The Indian members present were a witness to what had been intended and what was enacted. The main purpose was to make the bureaucratic Government in India work well. The government tried to nominate either Indian princes and chiefs or members of older aristocratic families. They would not easily accept nominations. Even those who could be persuaded to accept the seats on the legislature would not very often attend. Representing an India which was fast changing, they were neither capable of taking, nor inclined to take, any effective part in the deliberations of the Council. The government had not intended that they should play any effective part in the making of laws. They were there only as witnesses to the process of the laws having been made. No wonder that they played no part in the making of laws. As Lord Dufferin put it, expression of Indian

opinion through self-constituted, self-nominated, and therefore untrustworthy, channels was worse than useless.

We have already noticed the changes introduced in the central executive by the provisions of the Act.

Under the provisions of the Indian Councils Act a provincial council for Bengal was set up in 1862 and for the North Western Province in 1867. Parliamentary legislation conferred powers on the Indian legislature to make laws for British subjects in Indian States in 1865, for British Indian Subjects in any parts of the world in 1869 and for the Indian marine in 1884. In 1870 the power of legislating for the backward parts of British India was vested in the Governor-General in Council. This was confirmed by an Indian Act of 1874. The Madras agency area, Laccadiv islands and Minicoy in Madras, the district of Darjeeling and Chittagong hill tracts, Lahaul and Spiti in the Punjab, the district of Anguin, Santal Paraganas, Sambhalpur and five districts of Chota Nagpur in Bihar, Mandla in C. P., the Lushi, the Naga, the Garo, the North Kachar, the Khasi and the Jaintia hills in Assam and tribal areas in the North West Frontier Province, the agency areas in Baluchistan, Coorg, Andamans and Nicobar were so notified. They cover an extensive area measuring 2,07,900 square miles with a population of more than 14 millions.

The years that followed saw the birth of national awakening in India. The establishment of Universities at Calcutta, Bombay and Madras accelerated the pace of educational progress. The educated classes in India pressed for a share in the administration of their own country. They demanded admission on equal terms to the Indian Civil Service. They suggested the convertion of the councils meeting for legislative purposes into popular elected bodies. The Government of India sympathised with these aspirations. They saw in them an increase in their power as against that of the India Office.

The Secretary of State was for ever brandishing his responsibility to the British people through Parliament in their faces. If there was a popular and elected element in the Indian legislative councils, the Government of India could retort that they had the backing of the Indian people. The European commercial interests had now been expanding in India more rapidly ; their views sometimes clashed with those of the official classes. They demanded representation in the law making body so that they could present their point of view there. Thus the educated Indians, British commercial interests in India, and most of the British public servants in India, all agreed in demanding not an advance on the councils set up in 1861 merely but a fundamental change in their character as well. Lord Dufferin set up a committee of his council to study and report on the problem. Their suggestions formed the basis of the official despatch on reforms submitted by the Government of India. It proposed that the councils in India be changed into petty parliaments—consultative bodies to help government with advice and suggestion. Non-official members should outnumber the officials. In the provinces two fifths of the non-official members should be elected. This was counter-balanced by giving heads of the government the right to overrule the council, thus preventing the passage of the bills they did not like. The bills the executive government thought necessary could be passed independently. The new legislatures should have access to all papers and be free to offer advice and suggestions. Debates on such advice or suggestions should be permitted. The estimates connected with local finance should be referred to standing committees and debated, if necessary, in council. The council, they suggested, should consist of two orders or divisions.

The main aim was to give a still wider share in the administration of public affairs to such Indian gentlemen as by their influence, their acquirements, and the confidence they inspire

in their own countrymen, are marked out as fitted to assist with their council the responsible rulers of the country.'

The Conservative Government in England shied at the proposal to introduce elections for the councils. It was not prepared to widen the functions of the councils to the extent desired by the Government of India. The Indian National Congress founded in 1885 sent a deputation to England to secure the support of the Liberal opposition in England in the problem of political reforms in India.The opposition in England as also the insistence of the Government of India led to the Conservative Government saving its face by avoiding the use of the term election in the Act, but accepting an amendment which gave the Governor-General in Council the power to make rules and regulations which virtually introduced elections.

The Indian Councils Act of 1892 widened the functions of the legislatures in India and converted them into petty parliaments. The members could ask questions and thus obtain any information which they desired from the executive government. Of course the Governor-General. the Governors and Lieutenant Governors could prevent the asking of, and thus avoid, answering a question--even the most innocent one—whenever they liked by asserting that it was not in public interest to do so. But the rising tide of public criticism in the Indian press and on public platform compelled the government to seek for a means of stating its own version of events. To answer such criticism by official communiques would have enhanced, it was held, the prestige of the critics. It now became possible to make public statements in answer to questions asked in the councils. But if the government intended to use it for their own publicity, Indian members used this right to pick holes in the administrative system by directing their arrows at its weakest spots. The financial accounts of the current year and the budget of the next year were presented to the councils. The members were permitted to make general observations on the budget and

make suggestions for increasing or curtailing expenditure. The Government thus got an opportunity of defending its entire administration in the current year and unfolding its plans of administration for the next year. The object underlying the presentation of the budget was political—to seek publicity for the governmental programme—rather than financial. But the Indian members used their opportunities for both the purposes; for a general criticism of the administration as also for making suggestions about expenditure. They used the councils for publicly criticising the administration—which they had been doing so far only on the public platforms or in the Indian Press. They thus secured publicity for their views on the British administration in India. The finance member and the president wound up the debate and some times made a begrudging concession in minor matters. The usual official attitude towards the views expressed by Indian members was one of benevolent tolerance and amused interest. The Indian politicians were treated as amateur students of their country's administration whose views could not carry much weight in the eyes of the professional administrators. To accept a suggestion made publicly in the open council spelt loss of prestige. This was avoided by stoutly opposing the suggestions when made, but adopting some of them in the next year's budget. Now that tht functions of the councils were widened, they succeeded in attracting the country's best talent. The provincial councils were permitted to amend or repeal Acts of the Indian legislature with the previous approval of the Governor-General.

The number of additional members in the councils was increased. The Indian legislative council was to have sixteen additional members. Of these, six were officials and ten non-officials. The provincial legistlatures of Madras, Bombay, Bengal and North Western Province elected one representative each. When the Punjab got a council in 1897, its representative was added to these four as also a representative of Burma

when it acquired a council. Another member was elected by the Associated Chambers of Commerce. Besides these sixteen additional members, there were nine ex-officio members as well, the Governor-General, six ordinary members of the executive council, the Commander-in-Chief and the head of the province in which the Council met, the Lieutenant-Governor of Bengal or the Punjab. Thus the total number of members when the council met for legislative purpose was 25. At first five, and later on, seven of these members were elected. Fifteen members were officials. As all official members attended as a matter of duty, the Government had a comfortable majority in the house, all the more so because the European representative of the Associated Chambers of Commerce almost always voted with the Government and three to five nominated non-officials were usually selected to represent loyal and conservative opinion in the country.

The councils at Bombay, Madras and Bengal had twenty additional members. Of these, nine were usually officials, four nominated non-officials and seven elected. The electing bodies here were the district boards and municipalities grouped together into electoral colleges for this purpose, the University and the Chamber of Commerce. The Council in the North Western Province (renamed in 1902 the United Provinces of Agra and Oudh) consisted of 15 members similarly divided. In 1897 councils were set up in the Punjab and Burma. In all these councils the officials had a majority, 13 members out of 24 being public servants in Bombay and Madras. The members held office for two years though they could be re-elected and re-appointed.

In view of the claims made recently that the British Government in India was always aiming at training Indians in the art of self-government it is interesting to record Lord Dufferin's disclaimer.

'It might be concluded that we were contemplating an approach, at all events as far as the provinces were concerned, to English parliamentary government and an English constitutional system. Such a conclusion would be very wide of the mark, it would be wrong to leave the Indian public opinion under so erroneous an impression. India's destinies have been confined to an alien race. All that the government hoped to do was, by associating with them in the tasks of administration a considerable number of selected and elected Indians from the educated classes, to place themselves in contact with a larger surface of Indian opinion and thus to multiply the channels by which they would ascertain the wants and the feelings of various communities for whose welfare they were responsible.'

If any doubts were left as to the British intentions, they would be easily removed by the scrupulous care which had been taken to avoid the use of the word 'election' in the Act. In law 'the elected' members were 'all nominated' though after taking into consideration the views of the bodies whose representatives we have described them. These bodies met to make 'recommendations' to the Governor-General. The person the majority favoured was not described as 'elected.' His name was recommended to the Governor-General for 'nomination.' Thus there was 'veiled election' of the members. It was an indirect election ; the member of the council was several times removed from citizens. At the municipal or the district board elections the citizen voted for a member. The member thus elected took part in the election of the member of the local legislature along with other non-official members, some of whom had been nominated by the government. The non-official members of the local legislature elected their representative to the supreme legislative council. Of course, election by the British commercial communities in Bengal, Bombay and Madras through the chambers of commerce of which most

European firms were members could be said to be direct. In Bengal the landlords were given a seat.

The new 'selected and elected' members of the legislature who now came to the council were capable men of a very different calibre from the non-official Indians who had been hitherto nominated. Inspired by English liberalism of the nineteenth century, the politically awakened classes in India were not slow to see the opportunity thus provided for taking a hand in the government of their own country. The legislatures attracted the best intellects of the country. The influence that they exercised over the course of administration cannot easily be gauged from the reports of the official proceedings alone.

Prestige very often stood in the way of the government accepting their advice publicly when it was offered. This would have amounted to admitting that the Indians could teach their British masters how to govern their own country. A bureaucrat does not like to admit this. It was particularly so during the administration of Lord Curzon. But Pheroz Shah Mehta, Gopal Krishna Gokhale, and Dinshaw Watcha could not be in any assembly without influencing it by their mere presence. The councils provided a training in utilizing new opportunities for purposes other than those of their authors. They were used as political forums where the advance guard of Indian national movement could have their say without let or hindrance.

CHAPTER XIII

THE NEW JUDICIARY
1858 to 1919

When the Government of India was transferrd to the Crown, there were two types of courts in India existing independently, the royal courts and the company's courts. The disadvantages of this 'dyarchy' had long been apparent, but it had been difficult to bring about any successful reorganisation so far. In 1861 an Indian High Courts Act was passed by which High Courts were established at Bombay, Madras and Calcutta in 1862 inheriting all the functions of the Supreme Courts and the Suddar Diwani and Saddar Nizamat Adalats.

The powers of the new courts were manifold. They exercised original civil and criminal jurisdiction in the three presidency towns. All civil cases exceeding in value Rs. 100 were tried in them. The serious criminal cases which were elsewhere decided in the sessions courts were in the Presidency towns decided by the High Courts. European British subjects were tried in the High Courts even for criminal offences committed outside the Presidency towns. The courts granted probates and letters of administration to the successors at law of the deceased on the application of the interested parties. The creditors of a debtor applied to them for having him declared insolvent and for distributing his property among them. As matrimonial courts, they granted divorce to Christians within their jurisdiction. As Courts of Admiralty, they decided prize cases and awarded vessels captured to appropriate parties.

They were also courts of appeal sitting in judgment over all the civil and criminal courts under their jurisdiction. They entertained both appeals and references from them in all cases.

They enjoyed extraordinary original jurisdiction in civil and criminal matters. By consent of parties or on the application of the Advocate General, or moved otherwise. they could transfer any case, civil or criminal, from the files of any other court under them. The High Courts were, like the Supreme Courts before them, Courts of Equity as well. Any aggrieved party could ask for relief in equity under the usual forms of writs common in England. Among other things they thus determined the legality or otherwise of detention of detenues applying for writs of Habeas Corpus.

The racial discrimination existing in the Supreme Courts was perpetuated by providing that, though British subjects could sue the executive in the High Courts, Indians could not.

The High Courts exercised the power of administrative superintendence over the lower courts. With the approval of the Government of India, in the case of the High Court at Calcutta, and that of the local Government in the case of Bombay and Madras, they could make general rules for regulating the procedure, calling for returns and settling the judicial fees in the courts subordinate to them. The rules made by them kept them in touch with the speed of judicial work done by the subordinate courts and thus enabled them to make provision for a speedier disposal of cases whenever they felt it necessary.

Every High Court consisted of a Chief Justice and 15 other judges. They were appointed by the Crown on the recommendation of the Secretary of State who presumably consulted the Lord Chancellor when appointing judges from the English Bar, and the Governor-General in the case of the rest. At least one third of the judges were members of the Civil Service. Another one third was taken from the English Bar, the remaining one third could be recruited from any sources but were in the beginning recruited mostly from these two sources. If a Chief Justice was absent or unable to act the Governor-

General made an officiating appointment from among the other judges of the same High Court. When an excess of work required it the Governor-General could appoint an additional temporary judge to hold office for not more than two years. The Governor-General in Calcutta and Governors of Bombay and Madras in their own presidencies could make an officiating appointment if a vacancy occurred. The Judges held office during the pleasure of the Crown, but, under rules made by the Secretary of State in Council, retired on reaching the age of 60. The Secretary of State in Council fixed the salaries of the Judges at Rs. 5,000 for the Chief Justice and Rs. 4,000 for other judges of the court. He could vary their salaries but any reductions made were to leave salaries of earlier appointments unaffected.

The judges of the High Court sat in single benches or in division courts consisting of two or more judges. The Chief Justice constituted division courts and assigned work to the judges. Sometimes full benches of three or more judges were constituted to try cases of special legal importance. Judgment in a division court was delivered by the majority or by the senior judge in case of a court consisting of two judges only.

The High Courts now established created a tradition for independence and impartial justice. The appointment of the civilian judges was sometimes criticised on principle. The justice of this criticism had been conceded in the Act when it provided that a civilian could not become a Chief Justice. But as most of them came from the ranks of the District and Sessions Judges, it was found that it did not impair the reputation or the status of the courts. As one third of the posts could be filled at discretion, it became possible to appoint Indian with a legal qualification acquired in India to the various High Courts. Indian members of the Civil Service also found promotion to the High Court easier than to the higher posts on the executive side.

About the time the High Courts were being set up in India the work of codification entrusted to the Law Commissioners was coming to an end. The Indian Penal code, the Codes of the Civil and Crminal Procedure were enacted by the authority of the Indian legislature. They helped in evolving order out of the legal chaos which had formerly characterised Inlian judicial administration.

In 1865 the Governor-General in Council was authorized to alter the limits of the jurisdiction of the various High Courts. The Act also extended the authority of these courts by bringing the Indian Christians residing in Indian states within their jurisdiction.

A fourth High Conrt was set up at Allahabad in 1866 without any original side because Allahabad had had no Supreme Court under the company. It was not an Admiralty court either as Allahabad was not a port. In other matters it was placed on the same footing as the older High Courts.

A cheaper appellate and superintending agency was provided for the newer provinces by setting up a Chief Court in the Punjab in 1866 and judicial commissioners' courts in Sind, the Central Provinces, Oudh and Coorg. Their judges were appointed by the local government from among its own judges. Independent members of the Indian or the English bar were seldom selected to fill seats in them as the salaries were lower. Appeals from these courts lay to the Privy Council. These courts did not enjoy the same reputation for independence as the High Courts did as their members were supposed to be amenable to executive influence in cases where the government was especially interested. The Punjab Chief Court was converted into a High Court in 1920 and a High Court was set up for Bihar and Orissa at Patna in 1912.

Till 1872, Europeans outside the Presidency towns were tried only in the High Courts. The result was, according to Sir John Stratchey, 'often a complete denial of justice.' When

the Code of Criminal Procedure was enacted in 1872, it was provided that European British subjects be tried for minor offences by European Justices of the Peace or European Session Judges. This made their trial possible at places nearer the scene of occurrence and thus facilitated the lodging of complaints and production of witnesses. Though the law smacked of racial discrimination, there was none at the time of enactment as all the session judges in 1872 were Europeans : the first Indian had entered the Civil Service only in 1863. But as time passed, Indians appointed to the judicial service became Session Judges. This raised the question whether an Indian Session Judge should be given the right to try Europeans. An Indian Session Judge raised the issue; the Government of India considered the matter and declared that it had decided to settle the question of jurisdiction over European British subjects in such a way ' as to remove from the code, at once and completely, every judicial disqualification which is based merely on race distinctions.' The Governor-General in Council approved the draft of what came to be known as the Ilbert Bill; the Secretary of State in Council, with a dissenting minority of one, accepted it. But the threatened abolition of racial discrimination ' provoked a storm of indignation on the part of the European community in India.' The bill, it was said, ' outraged the cherished conviction held by every Englishman in India, from the highest to the lowest, that he belongs to a race whom God has destined to govern and subdue.' It attacked the theory of racial superiorty held by many Englishmen in India. Not content with constitutional means of protest open to them, the Europeans in India chartered a ship and a conspiracy was set afoot for the purpose of securing the person of the Governor-General and conveying him back to England a prisoner. ' The controversy ended with the virtual abandonment of the measure.' The power of sessions judges and district magistrates to try summarily cases involving European

British subjects was taken away, they could try them only with the help of a jury.Even then they could hear only cases in which the highest punishment was imprisonment for 6 months and a fine of Rs. 2,000. But European juries were not available in most of the district towns in the mofussil. Virtually, the Session Judges, Indians and Europeans alike, lost the right, which European Session Judges had till then enjoyed,of trying Europeans. Even minor cases gravitated to the High Court as before 1872, unless a Session Judge happened to be a Justice of the Peace. As such, he could try Europeans summarily. No Indians outside the Presidency towns were appointed justices of the peace. 'The emasculation of the bill through the opposition of the European community in India was a valuable lesson to the nationalist leaders. It showed what could be accomplished by organized agitation and thereby prepared the way for the Indian National Congress.' The trial of Europeans accused of crime thus long remained a mockery. They could mostly be tried before the High Court. The high cost of taking witnesses and exhibits to these courts constituted a denial of justice. The European juries were notorious for their fellow feelings for the European accused brought before them. Seldom was a verdict of murder or man-slaughter returned against a European accused of the murder of an Indian. Lord Curzon had to be content with disciplinary action against two European regiments when a European soldier accused of murder was acquitted by the jury.

During the whole of this period the district magistrates all over India were also collectors. They were responsible for preserving law and order in their districts and tried the accused considered by the police guilty of offences against public order. In non-regulation provinces they were very often army officers seconded for civil work. Almost every district had a sessions judge who presided over the highest criminal court in the district. He heard appeals against the decisions of the dis-

trict magistrate as well. But rather curiously he was not the head of the magistracy in the district ; he possessed no comprehensive power of superintendence over the lower criminal courts. This was reserved for the collector-district magistrates. The separation of the judiciary from the executive was almost the first of the demands for reforms in British India. The district magistrates—on account of their association with the police —were held to be prejudiced against the accused in certain types of cases. As the head of the magistracy they discussed their cases with the subordinate magistracy and sometimes indicated the sentences they thought necessary. When the rising tide of nationalism brought about clashes between the government and the educated classes, the evils of the combination of the judicial and executive functions in the same official became glaring. No attempt however was made to deal with them during this period.

CHAPTER XIV

THE ADMINISTRATIVE SERVICES

The competitive civil srevice establised in 1854 remained the the main instrument of government throughout this period. Its members filled all offices of trust and responsibility in the administration. A Parliamentary Act passed in 1861 condoned the appointment of non-covenanted civil servants to some of these posts in the past but laid down that in Bombay, Bengal and Madras only covenanted civilians recruited by competition in England were to hold these offices in future. Thus Secretaries, Deputy Secretaries and Under-Secretaries in the Government of India and the provincial governments (in all except the technical departments of Public Works, Marine and the Army), members of, and Secretaries to, the Boards of Revenue, Accountants-General, Commissioners of customs, salt, excise and opium, Opium agents, District and Sessions judges, additional and assistant Sesions judges, District, Joint and Assistant Magistrates, Collectors and Assistant Collectors and Commissioners of revenue, were all to belong to the covenanted civil service. Between them these posts accounted for all the important administrative charges in the provinces and at the centre. The Act abolished the rule of promotion by seniority. In the non-regulation provinces covenanted civil servants continued sharing these listed posts with the officers of the army seconded for civil employment. In 1876 the list was extended to non-regulation provinces so far as posts at the headquarters of the government were concerned. Military officers, however, continued in the districts and even as commissioners of revenue in the divisions. An Act of 1870 allowed one sixth of the annual vacancies in the civil service to be filled by nomi-

nation in India under rules approved of by the Secretary of State in Council. Satisfactory rules for the purpose were not framed till 1879 when it was laid down that one sixth of the vacancies existing in 1870 should be so filled. It was decided to ignore qualified Indians and recruit for these posts Eurasians, Anglo-Indians and a very small fraction of Indians from the old aristrocratic classes. It was arguable that the scions of the old aristocratic houses had been born to command, but no such claim could be made on behalf of Eurasians and Anglo-Indians. In actual practice the scheme broke down as the new entrants proved extremely unsatisfactory. This naturally proved a balm to the service interests who had been in one way or another opposing the implementing of the Act of 1870 so much so that Lord Lytton had roundly accused the Indian government of bad faith, if not worse, in its professions of introducing an Indian element in the administration.

In 1887 a public services commission was appointed to go into the whole question and suggest ways and means of carrying out the objective of the Act of 1870. As a result of its report a separate provincial civil service was set up. One sixth of the total posts in the civil service was to be manned ultimately by civilians promoted from among the provincial civil servants. The Government of India and the Secretary of State in Council accepted the recommendations of the commission but when the time for carrying out the suggestions came they again demonstrated that they were opposed to the promotion of Indians to the higher post in the civil service. It was intended to place the persons so promoted among the civilians in *one list* so that seniority and promotion could thus be more logically decided. The new entrants, however, figured in a separate category as statutory civilians as against the covenanted civilians. Their salaries were fixed at two thirds of the salary which the covenanted civilians filling the same post and doing the same work were paid. To cap it all, promotions from provincial

civial service into the statutory civil service came at the end of a provincial civil servant's career. The result was that he passed the rest of his days in the job to which he was promoted. Some provincial civil servants were, under these rules, promoted to be district magistrates or district and sessions judges but seldom progressed beyond that. The worst of it was the fact that though out of a total of 648 posts in the superior civil service in 1892, 108 should have been reserved for the statutory civil servants, only 61 were so reserved at one time .The new rules had been so interpreted as to demand the reservation of one sixth of the posts in 1892, taking no notice of subsequent expansion in administrative services.

The provincial civil services were filled by nomination and by a competitive examination held under the rules framed by various governments. Its members held some of the executive and judicial offices which had hitherto been held by the subordinate civil service which till then had comprised all civil servants from the clerks to the extra assistant commissioners. The higher civil and judicial offices had so far been held by men promoted from the ranks. They had not always proved satisfactory. Now selection for the provincial civil services was made separately. Those selected were expected to perform executive and judicial functions straightway after a short period of probation instead of rising to those posts by painful promotion by seniority. Thus it was possible to secure much better recruits. Out of these civilians, men of experience and proved ability were to be promoted to one sixth of the posts usually held by the members of the civil services.

As said above, neither in the matter of salaries nor in that of filling the topmost posts, did the new scheme prove very satisfactory. Indian public opinion had been demanding the removal of the artificial barriers placed in the way of the entry of Indians to the civil service. They demanded no favours. They were willing to enter by the same rigid tests as those

applied to European members of the services. A fortunate few had, despite all obstacles. found their way into the civil service through the competitive examination held in England particularly after the institution of state scholarships for higher education instituted by Lord Lawrence. Official English opinion was against the entry of Indians through competition into the civil service, mainly because such recruits entered the service through competition on terms of equality sometimes defeating English competitors. Their presence in the service was a blow to the doctrine of racial superiority which most Englishmen in India cherished and which had made them oppose the Ilbert Bill tooth and nail. Further, their entrance riased the problem of how to keep the higher posts in the hands of Europeans without recourse to an open racial bar. Unlike the men promoted from the provincial civil services, these direct entrants could not be expected to mark time throughout their official careers as District Magistrates and Collectors. Their usual promotion in the service was likely to place them in positions where they could issue orders to the junior European members of the service—not a very cheerful prospect for those juniors nor one much liked by their European competitors. It was this which made the British Government stoutly oppose the demand for holding the examination for the civil service simultaneously in India and England. Even when the House of Commons passed a resolution recommending this course, both the Governor-General in Council and the Secretary of State in Council opposed it. The official reason given was that whereas the competition secured the best English candidates for the service, it was not sure that it would secure the best Indian candidates as well. If the Government had really believed in this proposition—so obviousy difficult to maintain,—it should have stopped the entry of Indians to the civil service through the competitive examination in England ! The oligarchic England, where till recently promotion in the

army had been purchased under official approval and where patronage to fill office had long been a cherished privilege of the politicians, could not easily stomach the surprising fact that successful Indian candidates did not always come from the old feudal classes which the British in India had been favouring. But they had proved as good as, if not better than, the European members of the services in the task of administration.

The Aitchison Commission opposed the holding of simultaneous examinations for the civil service in England and India using the same tests and assessing the candidates through the same sets of examiners. It welcomed, however, 'the natives of India who underwent English training and showed the degree of enterprise, strength of character and other qualities without which success could scarcely be expected in the English examination.' But it failed to demonstrate how simultaneous examination in India held under similar conditions would lower the strength of character in the successful Indian candidates though it might well have brought down their degree of enterprise as they would not have to go to an alien country to take the examination. The Secretary of State's despatch to the Government of India on the recommendations of the Commission gave the game away when it based the opposition also on the ground that it would not be justifiable to offer the Indians successful in the examinations held in India the same salaries as were being given to Englishmen. They could have easily been given lower salaries if this was the only reason standing in the way of these simultaneous examinations.

Meanwhile other services had also come into being. The appointments to the Indian Medical Service and the Indian Educational Service were made in England normally from among the British young men fresh from the Universities or hospitals. All the higher appointments in the medical department, government colleges and administrative and inspection staff in the education department were reserved for these

services. The engineers were recruited from the Royal Indian Engineering College at Cooperhill, the graduates of the engineering colleges in India being confined to the lower jobs mainly. The Secretary of State made nomination to the Indian Police Service from among European candidates. The Imperial Forest Service, the Indian Agricultural Service and the Indian Veterinary Services also remained closed to Indians almost till the end of this period (1917).

Provincial branches of almost all these services were formed in India after 1889 The Indians recruited to the provincial services and Europeans joining the Imperial services very often started their career discharging the same functions. Even when this was so, a member of the superior service received about twice the salary that a member of the provincial service did. The use of slightly different designations for the members of the two services kept them apart. Provincial civil servants became Extra Assistant Commissioners and Deputy Collectors whereas Indian Civil Servants were Assistant Commissioners and Assistant Collectors. Members of the Indian Police Service started as Assistant Superintendents whereas members of the provincial services holding the same office were called Deputy Superintendents.

Here, if nowhere else, was racial discrimination seen openly at work. The British belief in their divine mission to rule India could not find a place for the association of Indians on any but inferior terms in this task.

CHAPTER XV

THE MORLEY-MINTO REFORMS

The turn of the century saw India in the grip of a famine. The exchange also hit her hard. Lord Curzon's administration awoke the latent national consciousness of Indians. It was one thing to be ruled by an alien race, but it was quite another thing to be told persistently that Indians knew nothing about the problems of their country as Lord Curzon told them repeatedly. He loved to move in mysterious ways. For him the Government of India was an institution which could work smoothly only when it was inspired by one man and supervised by one man. There was little room in his councils even for his usual official advisers and much less for Indian non-officials who were members of the various legislatures in India. He flouted them ; he publicly insulted them. The Indian Universities Act seemed to make an attempt at officializing the universities and thus drew the opposition of all educated classes against him. The partition of Bengal seemed to be aimed at diminishing the influence of the politically awakened classes in Bengal by reducing them to a minority in both the new provinces. It roused a mass agitation such as had never been seen in India before. A terrorist movement came into being allied with an older similar movement in Maharashtra and Bombay. The treatment of Indians in South Africa about this time fanned the fire of political discontent in the country. The feeling of national frustration drew food for reflection from the Japanese success in the Russo-Japanese war. The divine dispensation which was supposed to have linked India and England together for India's good came to be doubted as India was proved to be in an inferior

position even with that link as compared with Japan. The British connection came in for criticism when it was discovered that it failed to secure a fair deal to Indians in another part of the British Empire. Why then be content, people asked, with subordination to the British?

Lord Minto who succeeded Lord Curzon as the Governor-General read the signs of the times and decided to deprive Indian discontent of its main prop by political reforms. A committee of the executive council studied the subject and the Government of India sent a despatch home embodying its proposals. Meanwhile, Lord Morley, the radical disciple of Gladstone, had become the Secretary of State in the Liberal cabinet. He kept up a continuous correspondence with the Governor-General while the latter was still forming his proposals. The result was a remarkable correspondence of views between the Secretary of State and the Governor-General on all matters except the communal representation of the Muslims. Much as he seemed to advocate reforms, Lord Minto distrusted Indian political opinion, even moderate public opinion. To buttress the Raj under new conditions, he secured the presentation of an address to him by Muslims. Till about thirty years after the mutiny the Muslims had been suspects in the eyes of the British Government. Naturally some of their leaders desired to remove this distrust by proving that the British could count on them as loyal supporters of their government. The administration faced with a rising tide of nationalism was on the look-out for probable supporters. The Anglo-Oriental School had been founded at Aligarh under Government auspices to prepare a class of Muslim young men who would remain true to the Raj and could thus secure for themselves a share which had been denied to them by the British on account of their educational backwardness and supposed anti-British feelings. It was easy to pull the strings and before the final despatch was sent home,

an address was presented to Lord Minto reminding him of Muslim loyalty and claiming special treatment for the Muslims. As was then customary, the address presented to the Governor-General had to receive the general approval of his Private Secretary before permission to present it was granted. Naturally the address was co-ordinated with the answer Lord Minto was to give. Like the *Mazhar* which Akbar secured from his obliging theologians, the address was secured to provide a jumping off ground for the views which Lord Minto had formulated on the subject. It was not the address which brought forth the enunciation of the Government's views on the question, it was the views which procured the address so that Lord Minto should force the hands of the Secretary of State in the matter. Lord Minto promised not only separate communal representation to the Muslims but also representation much in excess of their population on account of 'their services to the empire.' As a British officer wrote to Lady Minto, the Governor-General saved the Indian empire for the British that day by thus openly putting a premium on the pro-British attitude of the Muslims. Of course the additional representation granted to the Muslims was at the cost the non-Muslims who were thus punished for their demanding that India should govern herself—for repeating after the British Prime Minister Campbell-Bannerman that good government was no substitute for self-government.

Though Lord Morley deprecated all attempts at finding even the seed of parliamentary government in the Indian Councils Act of 1909 both in the Lords and in his despatch to the Government of India, it may well be asked whether these denials were not in the nature of attempts at recommending his proposals to the audiences who would not have otherwise been reconciled to certain features of the Morley-Minto reforms. As the authors of the Montford Report pointed out, the Morley-Minto reforms were 'the final outcome of the old

conception which made the Government of India a benevolent despotism.' It would be insulting to Lord Morley's radicalism to suppose that he had bolted the door against further advance in future. As the Montford report put it, 'the Morley-Minto reforms do constitute a step forward on a road leading, at no distant period, to a stage at which the question of responsible govemment was bound to crop up.' The constitutional autocracy that he set up was bound to find its autocratic side challenged by its constitutionalism and an answer had to be found for that challenge. Autocracy was apt to go overboard.

The Indian Councils Act of 1909 finally converted the meeting of the councils for making laws into subordinate legislatures by enlarging their functions. The budget was now considered in two stages. There was a general discussion which served the political purpose of criticism of the administration on the one hand and its defence on the other. Then followed the submission of resolutions thereon in the form of recommendations to the Governor-General which were inspired by financial reasons. The member who asked a question was given the right to ask a supplementary if he was not satisfied with the reply. Of course the government member could refuse to answer the question on the spot and demand notice. The members were now allowed to move resolutions in the form of recommendations to the executive. Thus so far as their functions were concerned, the councils only lacked the power of voting grants and moving motions of no confidence to become full fledged parliaments.

In their composition a great stride forward was taken by providing non-official majorities in all the provincial councils and a majority of elected members in Bengal. As the Government of India was unitary this arrangement did not expose the administration to any danger. Any measure which the provincial government could not secure, could be easily enacted by the central legislature where a majority of official members

was maintained. The total number of the additional members of the councils was increased and fixed at 60 at the centre, fifty in Madras, Bombay and the United Provinces, thirty in the Punjab, and twenty-five in the Central Provinces. The Eastern and the Western Bengal were assigned fifty members each. But the reorganization of the provinces in 1912 gave 50 members to Bengal, 50 to Bihar and 25 members to Assam. The number of additional official members in these councils could not exceed one half. The Lieutenant Governor of the Punjab remained an ex-officio member of the Indian Legislative Council when it met at Simla, the Chief Commissioner of Delhi, when it met at Delhi. The total number of the members though so inadequate for such a large population was fixed by official convenience. Only a limited number of officials could be conveniently spared from their duties when the legislatures were in session. This fixed the total number which was not to be much more than double the officials available for a legislature. Besides the official nominated members the councils were to consist of non-official members, whose number did not fall below one half of the total additional strength in any legislature. The members held office for three years. For filling some of the seats of the non-official members the old process of using certain corporate bodies for election was continued but now without the subterfuge of recommendation. Many of the bodies which had so far enjoyed the right of recommending members were given the power to elect them. Thus out of the 69 members who formed the Indian Legislative Council 37 were officials ; the Governor-General, the six councillors, the Commander-in-Chief and the Lieutenant Governor of the Punjab at Simla and the Chief Commissioner of Delhi at Delhi held office ex-officio ; twenty-eight officials form the central government and the provinces were nominated. Twenty-seven members were elected ; eight by ladlords, one by the European Associated Chambers of Commerce, another by the Indian

Chambers of Commerce, 17 members were elected by the non-official members of the legislative councils of Bengal, Bihar, Assam, the United Provinces, the Punjab, Bombay, Madras and the Central Provinces. Out of these 17 members, five were elected by the Muslim members and the rest by the non-Muslims. At one election the Muslims legislators elected six members and at the following the Muslim landlords elected a representative of their own. The councils of Bombay, Madras, Bengal and the United Provinces elected two representatives from among their non-Muslim legislators, those of the Punjab, Bihar, Assam and the Central Provinces one each. Muslim representatives were elected by the legislators of the Punjab, Bengal, Assam, the United Provinces and Bihar. When the Muslim landlords did not elect a representative, the Muslim legislators of Bombay did. The landlords paying land revenue above a certain figure met in provincial electoral colleges to elect their representatives.

In the provinces, the university senates, landlords, members of the district and municipal boards and chambers of commerce elected members. Seats reserved for Muslims were filled by them from among themselves.

Despite Lord Morely's protest, disqualifications were imposed on political offenders. They could not offer themselves for election. Power was, however, given to the heads of governments to remove these disqualifications.

These councils were to meet under the rules of business framed by the executive. The Governor-General and the heads of provincial governments were ex-officio presidents of the council; the legislative departments acted as the secretariat of the legislatures. The ex-officio presidents of the councils appointed vice-presidents to preside in the Councils during their own absence. They were usually senior members of executive councils. The heads of the Governments could disallow the asking of a question or moving of a resolution

even when it did not offend against the rules without assigning any reason other than it was not in public interest to do so. A quorum of 15 was fixed for the Indian Legislative Council.

The Act raised the number of the members of the executive council in Bombay, Bengal and Madras to four. It empowered the government to constitute an executive council for a Lieutenant Governor's province as well.

Lord Morley appointed an Indian to the executive council of the Governor-General and two Indians to his own council. The first was stoutly opposed in many quarters in India and England and was thought to be a revolutionary change making a definite breach in the citadel of white man's supremacy in India.

It was claimed for the Morley-Minto councils that they would associate the people in a real and effective manner in the work not only of legislation but of actual day to day administration. The moving of resolutions, the asking of suplementaries and the discussion of the financial statement were supposed to provide the opportunities for this association as also the appointment of Indians to the executive councils. But the inherent defects of these reforms and others that they acquired when they started working proved that 'they afforded no answer, and could afford no answer to the Indian political problem.' The council, it was discovered, had no real work to do. It had been originally intended that the official members would be left free to vote on resolutions. This hope was founded on the fact that the provincial representatives in the Indian Councils so far had been free to voice their views on the financial statement. But the official block became a government party under the strictest of party whips. The official members could ask no questions and move no resolutions. They could not even speak unless the official whip asked them to do so. Even when a point of order was raised, they remained silent spectators. The increase in the

total number of the members and the presence of elected members were rendered useless by the fact that the councils had a permanent majority of officials. The European elected members were, in Indian eyes, as good as officials. The landlords and the Muslims were admittedly there for their 'services to the empire,' and were bent upon improving the future of their classes by proving their loyalty still further. Thus the councils becamе impotent bodies met to register the decrees of the executive. The debates lacked life. The proceedings bore an air of unreality. What was still more irritating to the Indian members was the Government's usual policy of letting the non-official members speak and intervene in the debate at the end through the member-in-charge exhibiting an unconcern for the views of the Indian members which left them smarting. The governments—Indian and provincial—showed scant regard to the views of the Indian members on vital questions. They were accused of knowing Indian interests and representing the Indian masses less than the British officials did mainly because they were not representatives of the people. But if they did not represent the people at large, it was not their fault; the constitution made them so . It can be emphatically asserted that if means of securing direct popular vote had been devised during the period, the very same members would have been returned to the legislatures. It cannot be doubted that the members representing general constituencies represented the views, the feelings and the sentiments of the politically conscious classes in India.

The Morley-Minto councils demonstrated the high capacity of the non-official elected members for debate and for presenting their case. More than that, they also proved that given the opportunities, Indians could make positive and constructive contribution to the administration. Some of these Indian critics proved themselves, in debate at last, better masters of the problems confronting various departments of administration than the

official members in charge of those departments. If the Indian members could not secure the acceptance by the Government of their views, they used the councils as splendid platforms for giving publicity to the opinions held by an awakened nationalism. And when they decided to give battle to the government on questions on which they felt strongly, as on the Rowlett Bill in 1919, they exhausted all the weapons in the armoury of an irresponsible opposition and fought every inch of their ground. They knew they could not often influence the course of executive action, but they made speeches addressed to the Indian public rather than to their fellow legislators. They were bent on picking holes in the official armour to the delight of spectators.

But even as it was the non-official members did exert some influence on the course of administration. The questions they asked kept the administration on the look out. In legislation, their best work was done in the privacy of the select committees and the consultations to which some of them were invited by some heads of administration. Even resolutions when not accepted put the government on the defensive. The Indian members enjoyed the power of challenge and obstruction.

But the failure of the Morley-Minto reforms was due to several other contributory causes. The provincial councils had not much power over either the funds allotted to them or the course of administration which remained centralized in the hands of the Government of India. The absence of decentralization deprived the provincial councils of much of their utility. Though Indians were appointed to the executive councils there was no corresponding attempt either at creating a racial equality in the services or at throwing open other higher posts to Indians to some of which they were not promoted on account of the invisible but effectual racial bar. The local bodies remained as officialized as ever, the worship of efficiency which Ripon had decried twenty-five years ago still impeded all progress to local self-government. Racial bar

existed in many places. In their own country, Indians were not allowed to enter many places even as guests. The Secretary of State during his visit to India discovered that he could not take his Indian members to certain clubs even when those clubs were inviting him in his official capacity. As Mr. Montagu regretfully noted in his *Diary*, even the boy scouts were racially divided in mutually exclusive groups. The British domination of industrial interests in India continued.

Taken all in all, the Government of India remained inelastic and ante-diluvian, as Mr. Montagu dubbed it in the House of Commons.

CHAPTER XVI

THE ROAD TO PARLIAMENTARY GOVERNMENT GOVERNMENT OF INDIA ACT, 1919

When the Great War I started, the Indian public scene was already afire with burning questions. Indian unrest—the terrorist manifestation of the rising tide of nationalism—had been fed on many grievances. The insults to which Indians were being subjected in South Africa, the denial of citizenship rights in Canada and the repression which the Morley-Minto reforms had not been able to lessen were only some of the factors which not only lent colour to the extremist view of British 'oppression' in India but kept the 'moderates' as well far from reconciled. The affirmation of moral values in the War and the emergence of the doctrine of self-determination deeply influenced Indian public opinion. If the War was being fought to make democracy safe in the world, it was hoped, it would put India at least on the road to self-government. If self-determination was to be applied to the politically dormant Arabs in the Turkish empire, it was asserted, it should be applied to Indians as well. In December 1914, Mr. S. P. Sinha as the President of the Indian National Congress asked for an enunciation of the goal of British policy in India. The British answer was to suspend the publication of, as well as action on, the report of the Public Services Commission in 1915. Lord Willingdon in Bombay, however, tried to secure from Mr. Gopal Krishna Gokhale an indication of the reforms, which, if introduced just then, might satisfy Indian public opinion. The formation of the Home Rule League by Mrs. Annie Besant and Lokmanya Tilak was followed by the internment of the former and ineffectual security proceedings against the latter.

When Lord Chelmsford became Governor-General, he formulated his government's opinion on reforms and sent them to the Secretary of State. This inspired the 'Memorandum of the Nineteen,' a note on necessary reforms at the centre and in the provinces by all the nineteen elected Indian members of the Imperial Legislative Council. This was followed by the formulation of the Congress-League Scheme in December 1916 at a joint session of the Indian National Congress and the Muslim League. The Muslim 'loyalty', so convenient to the Government of Lord Minto, had been subjected to serious strain in the Turco-Italian War in 1911, the Balkan wars in 1912 and Turky's siding with Germany during the World War. The Congress which had stoutly opposed the granting of weightage and separate representation to the Muslims now conceded both in return for the Muslim League support to the Indian demand for self government. There were terrorist activities afoot as well; the Ghadr movement in the Punjab and the Kamagatamaro incident in Bengal were but two of them.

How long the British Government might have ignored all these signs of the times is uncertain. But the failure of the Mesopotamia Expedition in 1917 led to the appointment of the Mesopotamia Commission. It held that the failure was due to the inherent defects of the Government of India as carried on in India and England. British public opinion now discovered that a reform of the Government in India was called for if the war had to be won. In a crisis the Government of India had been tried and found wanting. A clean departure from the past was urgently needed in the interests of the British Empire itself.

The result was a declaration of British policy in India on August 17,1917. It closed one chapter in the constitutional history of India and opened another. Benevolent despotism was now dead and gone. It could no longer work the trick in Indian administration. The goal of British Government in

India was now defined to be *responsible* government within the British empire. This goal had to be reached by progressive stages. It was to be marked by increasing association of Indians, in every branch of the administration, and gradual development of self-governing institutions. Conservative opinion was reassured by the assertion that Parliament's responsibility for British administration in India was not yet to be impaired and parilamentary sovereignty in India was not to be touched.

It was a revolutionary announcement. Indians were to be trusted to govern their own country though only on a small scale just yet. All racial barriers were to be thrown down in every branch of administration including, obviously, the army. India's right to Swaraj was admitted. Despotism, however, benevolent, was to give place to constitutional government. It was true that the pace of progress was to depend on the success of the steps taken and the co-operation offered by Indians to the British in their scheme of establishing responsible government in India. But Indians had no doubts in their mind about their capacity to work representative institutions. Nor was it necessary to deny co-operation if the British were developing responsible government in India. So all ifs and buts were ignored and the announcement was welcomed by almost all political parties in India.

In order to implement the declaration, Mr. Mantagu, the Secretary of State, came to India and went about touring the country along with the Governor-General in order to investigate the problem on the spot. The Secretary of State held discussions with the officials in India most of whom were little disposed either to favour the policy or to suggest how to implemen it. The Governor-General and the Secretary considered the Congress-League Scheme, they examined the Memorandum of the Nineteen, they paid due attention to the scheme adumbrated by some heads of provinces. The Report on the Indian

Constitutional Reforms in which they announced their scheme for reforms was based on the Duke Memorandum which had been in its turn inspired by an outline drawn by Mr. Curtis of the *Round Table*. Sir Charles Duke was a member of the Secretary of State's Council. He had worked out the scheme outilned by Mr. Lionel Curtis in its application to Bengal. Mr. Montagu was convinced that further advance must take a new road and considered 'Dyarchy' as the only solution to the Indian problem. He won over Lord Chelmsford though only temporarily. He secured the 'cordial support' of the Governor-General's council to the general policy of the report. The India Council blessed it as containing, 'on the whole, the best measures to fulfil the policy announced in August, 1917'! It is interesting to record that Mr. Montagu was very anxious to secure the support of Sir Sankaran Nair, the only Indian member of the Governor General's Executive Council. Mr. Montagu recorded in his *Diary* that sir Sankaran Nair believed that if the proposals fell short of *his* expectations, he would bring about a revolution in India! Mr. Montagu asserted that Sir Sankaran Nair was capable of doing so. This had a curious fruitful sequel as we shall soon see.

The report enunciated four principles. Characterizing the progress in the domain of local self-government as almost non-existent, it declared that local self-governing bodies, municipalities and district boards, should become autonomous elected bodies entirely free from official interference.

Responsible government here was to be complete. In the provinces it was to be partial, one block of provincial subjects was to be administered by Indian ministers responsible to predominantly elected provincial legislatures, the rest of the administration was to be carried on, as heretofore, by the Governor-in-council. At the centre, popular representatives were denied responsibility but were offered opportunities of greater influence and larger association with the government.

Parliamentary responsibility of the Secretary of State was to remain in tact at law, the Secretary of State was however to be directed to delegate responsibility to the governments in India in the fields in which foregoing changes in policy proved successful.

In embodying these principles into concrete proposals much ingenuity was shown. Apart from the changes in British India, the states were to be formed into a Chamber of Princes and were placed in direct contact with the Government of India.

The proposals were immediately published and thrown open to criticism. One curious result was that one of the authors of the scheme—Lord Chelmsford—became a violent opponent of the vital parts of the scheme the moment Mr. Montagu's back was turned. But still more interesting is the fact that where the Government of India Bill introduced soon after departed from the proposals of the report, it accepted the recommendations made by Sir Sankaran Nair in his Note of Dissent which was sent to the Secretary of State along with the Despatch on Reforms which the majority of the Governor-General in Council sent home. A Joint Select Committee of both the houses heard further evidence from England and India on the bill and just before the meeting of the Indian National Congress in December 1919, the Government of India Act became law.

The Act had a mixed reception in India. The Congress boycotted the first elections held in 1921 but allowed the Svarajist branch of the party to contest the second elections held in 1923. The Liberals welcomed this first instalment of self-government in India in the hope that more would soon follow. The British officials in India saw in this violent break with the past a blasting of their hopes and many of them chose to retire on proportionate pensions rather than serve in India under the new conditions.

The Government of India Act, 1919, came into effect on April 1, 1921 and remained in force till 1937 in the provincial field. The central government was carried on till 1946 mostly under its provisions.

In the 'home' Government of India, the Act placed the major portion of the Secretary of State's salary on the British estimates and thus undid an injustice dating from 1793. It relieved the Secretary of State of his agency functions so far as civil purchases, care of Indian students in England and publicity for Indian trade and industry were concerned by transferring them to the newly created High Commissioner for India who took his instructions from the Government of India and thus served Indian interests rather than those of England. A fiscal convention laid down that when the Government of India and the Indian legislature agreed concerning fiscal policy, the Secretary of State would not interfere. The convention allowed the levying of protective duties on British imports into India but did not prevent the Government of India's accepting, under Secretary of State's inspiration, imperial preference at Ottawa without consulting the Indian legislature. As will be seen from its phraseology it emancipated the Government of India which could urge the views of the legislature against the orders or wishes of the Secretary of State. But it did not enable the Indian legislature to have a final say. Another financial adjustment came soon after the passage of the Act and lightened India's military burden by cutting down Indian payments to England for certain military services. Provincial bills now ceased to be submitted to the Secretary of State for approval before introduction in the provincial legislatures unless the Government of India thought otherwise and sent him a bill concerning the reserved departments.

Indian Bills on subjects other than imperial or military affairs, foreign relations, the rights of European British subjects, law of nationalization, public debt, customs, currency,

shipping and relations with Indian princess were not submitted to the Secretary of State for his previous approval. The Secretary of State's control over expenditure was lightened by reducing the list of matters for which the approval of Secretary of State in Council was necessary. Further stoppage of recruitment by the Secretary of State for certain transferred services in the provinces—education, and public works, roads and buildings for example—further slackened his hold over provincial subjects. In the administration of transferred subjects the Secretary of State limited his interference to cases which involved central subjects as well. On the reserved side inter-provincial disputes, interests of the central government and the rights and privileges of the All India Services came under his purview. As the central government was not responsible to the legislature, the Secretary of State continued treating it as an agency government claiming that all important decisions which he may have to defend in Parliament should receive his previous approval. This was a tall order, journalistic enterprise could report all decision of the Government of India in England when it was interested and thus create interest in them in Parliament leading to the Secretary of State's calling for information. To avoid this the Government of India continued remaining in constant touch with the Secretary of State supplying him information as before and leaving it to him to interfere when he thought fit.

The India Council was reduced in importance. The number of its members was to vary between 8 and 12, their tenure of office became five years, only such persons with Indian experience of ten years could be appointed as had left India not more than five years ago. A significant pointer was the increase in the salary of members to £1,500 a year with an overseas allowance of £600 to Indian members. The Council could be summoned whenever the Secretary of State thought it fit to do so. He was obliged to consult it in financial matters

and service questions only but it was left to him whether or not to consult it in any other matter. The acceptance of responsible government as the British goal in India reduced the importance of these extraordinary advisers to the Secretary of State. Their justification as supervisors of the entire Indian administration diminished considerably with the emergence of political responsibility of the authorities in India.

But the Secretary of State remained the ultimate respository of power for India. The revocation of dyarchy in a province required his sanction, the transfer of subjects from the reserved list to the transferred or vice versa required his approval. The Government of India remained a subordinate department of the British Government in all vital matters. He laid down and carried out the foreign policy of the government. He was the final authority in all matters concerning defence. He purchased all the military stores, he made arrangements with the War Office for the supply of British officers for the Indian army. He regulated the pace of constitutional advance in India by conventions. The superior services were all under his control. All proposals for the admission of Indians in these services waited upon his pleasure.

In the central government no transfer of responsibility was intended. But Indians were to be allowed greater influence. With this end in view the number of Indians in the Governor-General's executive council was raised to three in a council of eight. In order to pave the way for parliamentary government, a Public Services Commission was set up to recruit public servants, at first for central services, but later on for All India Services as well. In place of an Accountant-General, who had been, till now, a member of the Indian Civil Service appointed by the Governor-General, an independent Auditor-General assumed charge of the work of auditing the accounts of the central and provincial governments. He was appointed by the Secretary of State in Council and submitted his reports

not to the Governor-General in Council but to the Secretary of State and the central and provincial legislatures through their public accounts committee.

The executive powers of the Government of India were defined anew by the rules made under the Act. A list of central subjects was drawn up which were to be administered by the Governor-General in Council. Besides defence, foreign relattions, customs, relations with the Indian states, emigration, naturalization, shipping, navigation, railway, posts, telephones, telegraphs, currency and exchange, copyright, patents, census and ecclesiastical department which were obviously matters for central administration, the Governor-General in Council also administered scientific surveys, civil and criminal law, public services, industries and commerce, opium, petroleum, explosives arms and ammunitions, reasearch and ceremonials. Any subject not specifically transferred to the provinces was a central subject. As the division was the work of the Governor-General in Council, he could vary it and take charge of any subject. Besides those subjects the Central Government administered several territories directly, Delhi, Ajmer, British Baluchistan, Coorg and Andamans. The North-Western Frontiers remained for several years its charge but was converted into a Governor's province in 1932. The excluded tracts in the various provinces were its responsibility and as we have seen elsewhere they cover a very large area scattered all over British India. Its fourth function was to direct, superintend and supervise the work of the provincial governments. Here a distinction was made between the reserved and the transferred subjects. Its power of direction in reserved subjects remained unaltered, but in the transferred subjects, its direction was limited to problems affecting public services, inter-provincial disputes and the administration of central subjects.

All these functions continued to be discharged by the eight members forming central executive under the general direction

and supervision of the Governor-General. He was given the power of dissolving the either chamber of the legislature before the expiry of its normal term and could extend its life. His power of issuing Ordinances remained, but he could now enact any law rejected by the Indian legislature if he considered it essential in the interests of British India. He could authorise expenditure on his own authority for any purpose if he thought that it was necessary for the safety or tranquility of British India. He divided he expenditure into votable and non-votable items. The Governor-General in Council could restore any cut in grants made by the legislature.

The provincial government kept the centre informed of all important matters even when primarily of provincial concern. In the field of reserved departments, the Government of India could 'dictate to' the Governor in Council but even the transferred half showed its readiness to fall in with the policy of the centre. Instead of dictating policy here, it held conferences and consultative meetings, organized central co-ordinating agencies and research centres and thus continued playing an important part in the direction of such affairs as agriculture, roads, cotton and forest development.

The financial powers of the Government of India with reference to the provinces were reorganized under the Act. For one thing, the financial resources of the centre and the provincial governments were now separated. The provinces now received the entire income of the departments which they administered as provincial subjects. The centre retained income tax, income from customs, salt, opium, railway, posts, telegraphs, telephones, currency profits, and tribute from Indian States. To begin with, there was an excess of expenditure over central income. This was made good by 'provincial contributions' paid by every province and assessed in proportion to the additional revenues which every province received under the new scheme. Provincial contributions formed a source of

constant friction between the provinces and the centre till April 1927 when they were abolished.

The central government retained the power of controlling provincial borrowings in India. No new tax could be proposed by a provincial government without the previous sanction of the Governor-General in Council. The Government of India distributed a part of its balances to the provinces thus regulating their expenditure. It insisted that provincial balances should not fall below figures specified in the case of every province. Payment of the interest on provincial debts was made the first charge on provincial revenues.

The central control over public services affected every department of the provincial government. Promotions and appointments to selected posts were apt to be brought under review by the central government if any member of the service considered himself aggrieved by orders of the provincial government. The centre's control of external affairs included the right to legislate in order to secure the observance of any agreements with other countries even when such legislation affected transferred subjects.

The opportunities for the association of Indians in the administration and for their influencing it to a larger extent arose in the new central legislature. It now consisted of two houses. the Legislative Assembly and the Council of State. The total number of members was raised to at least 140 in the Legislative Assembly—which succeeded the old Imperial Legislative Council—and was fixed at a maximum of 60 for the second House, the Council of State. Out of these at least one hundred were elected in the Legislative Assembly and thirty four in the Council of State. Thus instead of the 26 elected non-officials being associated with the work of the legislature, their number was now raised to 134. This was a great advance. Members were elected directly by the primary voters. Franchise was high, for the Council of State inordinately so. For 105 seats for the assembly one in 200 of the

population—1,28,331 in a population of 240,000,000— had the vote. But for the 32 seats of the Council of State, only 17,000 voters enjoyed the franchise.

The new legislatures carried over the theory of the representation of interests, racial, religious and functional, from the old councils. Muslims, the Sikhs in the Punjab and the rest voted separately to elect their own representatives. Racial division found recognition in the seats alloted to the Europeans and Anglo-Indians. Functional representation was granted to landlords and business magnates. The Montford Report had well brought out the incompatibility of communal representation with representative institutions but had in the end not only continued the separate and weighted representation to the Muslims in the provinces where they were in a minority but had introduced it for the first time in the Punjab and Bengal where they were in a majority. Its authors extended it to the Sikhs, Anglo-Indians and Europeans as well. The carving of India into 145 units would have certainly created big constituencies, but the communal representation made the constituencies still more immense. The 34 constituencies of the Council of State were still larger. The Council was admittedly drawn from elements which were supposed to be more conservative ; the 17,000 voters included men with very high property and income qualifications along with a sprinkling of members of the old legislatures and presidents of District and Municipal Boards.

Members of the Assembly remained in office for three years ; the Council of State was renewed partially every year though a member held his seat for five years. The Governor-General could dissolve either of the houses sooner and could extend their term of life. The Assembly elected in 1936 was dissolved in 1946.

All this increased the number of Indians associated with the administration. The enlargement of functions of the legislature added to the occasions when they could be so asso-

ciated. The asking of supplementary questions was now extended to the whole house, the expenditure of the central government was submitted to the Assembly in the form of grants now, some were subject to its vote, others were open for discussion in it and some could not even be discussed, much less voted upon. Resolutions required long previous notice; discussion of questions of urgent public importance was facilitated in the forms of motions for adjournment of the house. Short notice questions could also be asked on similar occasions.

In the making of laws, the powers of the Indian legislature were not modified. It could make laws for all British Indians in British India and elsewhere in the world, for European British subjects and foreigners in the whole of India. It continued making laws for all persons , courts, places and things in British India. But besides the old requirement that the previous sanction of the Governor-General be obtained before introducing any measure concerning Indian revenues, public debts, army, foreign relations, relation with Indian States and religious beliefs, it was now required that the Governor-General's sanction be obtained before introducing bills regulating a provincial subject, repealing or amending a local Act and repealing or amending an Act or Ordinance made by the Governor-General. Once a bill received the assent of Governor-General no question could be raised about its validity in any court of law.

Both houses of legislature were predominantly elected, the Assembly overwhelmingly so. There was every chance that the Government may fail to secure the passage of legislation which it felt essential in the interests of British India. As its responsibility to the Secretary of State and Parliament for Indian administration remained undiluted, it was felt necessary that due provision should exist for the enactment of such laws. The Governor-General was thus given the power to 'certify' that the passage of a particular bill was essential, where-

upon even if it was rejected by one or both houses of legislature, it would become law. Certified Acts were ordinarily subject to His Majesty's assent but could be brought into operation at once if the Governor-General further declared that a state of emergency required that the Act be given effect to at once. Even in such cases the British Government could disallow such an Act.

Further advance in the working of the legislature was registered by allowing the Assembly to elect its own president in 1925, four years after its first meeting. The first nominated president was a parliamentarian from England. The disappearance of the head of the executive from the presidential chair was compensated for by the provision that the Governor-General could disallow any question, resolution, or motion of adjournment admitted by the President. A separate Assembly Department emerged after the election of the first non-official president. But under the constitution, the President lay outside the charmed circle of the Governor-General in Council who alone could administer a department. The formal charge of the Assembly Department therefore remained in the hands of the Governor-General.

So far procedure had been regulated by rules made by the Governor-General in Council. Now power was given to the Assembly to make its own standing orders further regulating business. The Governor-General could still make rules of business which superseded the Assembly's standing orders. The divorce between the President and the executive was publicly proclaimed when the Governor-General upset a decision given by the President by issuing a rule of business preventing a repetition of such an occurrence. It was soon discovered that an elected president occupying the chair in a house predominantly elected but having no hold over the executive had to provide himself with other than current English precedents in the discharge of his duties. But the main inspiration remained

English, the President had to secure that rights and privilege of the members were not interfered with. Thus when a minor public servant arrogated to himself the right of stationing police in the chamber, the President refused to transact business till what looked like an attempt at overawing members was put an end to. When a member of the executive—who was not a member of the Assembly—after making a speech therein did not remain present to hear criticism of his speech and of his department, the President censured the executive for showing scant courtesy to the members who took part in the debate. In its daily work, the Assembly now functioned as an independent body, the President refusing to oblige the administration by convenient rulings. He did not permit the Government to introduce a bill on a subject on which another measure was still pending before the House. He held that questions about the treatment of Indians in other parts of the world were well within the competence of the ordinary rights of the M.L. A.'s He exercised the inherent right of the President to decide whether full and fair discussion on a subject was possible and if it was not, he refused to proceed with the business. Once or twice the President gave expression to opinions from his chair which were indiscreet.

The functions of the legislature were now increased to allow the members to move motions for adjournment of the house to consider urgent questions of public importance immediately. Such resolutions had first of all to be admitted for discussion. Like other resolutions they were subject to the Governor-General's disallowance. When admitted a motion for adjournment was discussed at 4 o'clock the same afternoon. Discussions on it could go on for two hours. A vote could be demanded within that period by moving closure. If no such vote took place, the motion stood talked out at 6. P.M. The right to put supplementary questions was extended to the whole house and not confined to the member originally putting it.

A part of the budget was now actually voted, though the Governor-General in Council could restore any provision voted down or any cut made in the demands for grants. Whereas the entire budget had been open for discussion till now, under the new rules the Assembly was not allowed to discuss, except on the special direction of the Governor-General, the major portion of the budget concerning interest charges, defence, foreign policy, All India Services, the executive council, ecclesiastical department and relations with the Indian States, But the policy of the Government in most of these departments continued to be discussed by the members on the demand for the central secretariat. The budget was first presented to the Assembly by the Finance Member with a speech which was both financial and political. After not less than a week a general discussion on the budget started and went on for about seven days allotted for the purpose by the Governor-General. This over, the voting of grants began. The final budget was published under the authority of the Governor-General and besides the non-votable items included the cuts restored by the Council and the expenditure authorized by the Governor-General along with the moneys voted by the Assembly. Two statutory committees were set up ; a Standing Finance Committee of 14 members to consider all new votable expenditure and another Public Accounts Committee of 11 members to consider the report of the Auditor-General on the expenditure incurred. All the members of the Standing Finance Committee were elected whereas 3 members of the Public Account Committee were nominated. Both committees met under the chairmanship of the Finance Member. Other committees were, from time to time, appointed to advise the various departments, Emigration, Railways and Roads. Sometimes advisory councils and committees were set up consisting not only of the members of the legislature but of other non-officials as well.

The Council of State had a majority of official members

and was, even in its elected element, very conservative. A few Indian politicians of advanced views found their way into it, but otherwise it remained a dull body of honourable members who took their political functions lightly and were usually content to follow the government lead in most matters. It shared all the legislative functions with the Assembly except those connected with the voting of supplies and scrutiny of expenditure. The financial statement was however presented to the council as well and it could discuss the expenditure of the current year and the estimates of the next year in their financial and administrative aspects in the general discussions that followed at least a week after the presentation of the statement.

Several methods of resolving differences of opinion between the two houses had been suggested. Not one of them was tried during this period because whenever the Council of State and the Legislative Assembly differed, the Council had the support of the Government. On its defeat in the Legislative Assembly, the Government certified the measure in the form in which it desired its enactments and reintroduced it in the Assembly. On being defeated here again, the bill was introduced in the certified form in the Council of State. When the Council passed the measure in a form different from that in which it had been passed by the Assembly, it was not necessary to do anything to resolve the difference.

The Assembly, through its select committees on various measures, its standing committees associated with some departments, the incessant volley of questions it addressed to various members of the executive and its readiness to discuss by motions for adjournment important questions of urgent public importance as they arose, faithfully reflected Indian political opinion and kept the Government on the defensive. It raised other questions by means of resolutions which, even when opposed by the government at the moment and some times defeated

in the chamber, focussed attention on important problems engaging public attention. It secured for example the abolition of excise duties on cotton, the adoption of discriminating protection to Indian industries, the formation of an Indian volunteer force, the abolition or modification of 'repressive laws', the repeal of the old Press Act, and the abolition of racial distinctions and, true to English traditions, it used its financial power both for the ventilation and redress of grievances and suggesting economies in government. Much was made in government circles sometimes of the political use of the financial powers. But the Assembly would not have been true to its English origins if it had failed to use the power of the purse for ventilating grievances and trying to run the administration in its own way. That way had the English constitution grown from precedent to precedent. It was said sometimes that the executive was not responsible to the legislature under the Act. But the Act could not stand in the way of the executive's accepting the advice of the legislature. It was unnatural to expect that a predominantly elected Indian Legislative Assembly would not reflect the Indian opinion simply because to do so would bring it into clash with the British public opinion as viewed by the Governor-General in Council.

The increasing association of Indians was effected in the executive council of the Governor-General. Out of its eight members, henceforth three were Indians. The law member could now be drawn from the Indian bar as well, from among advocates of at least ten years' standing. The required experience at the English bar was also raised to ten years instead of five as previously. The Indian members were now drawn not only from public life but from the permanent civil services, both provincial and central, as well. The old requirement continued that at least three of the six ordinary members, barring the two ex-officio members (the Commander-in-chief and the Governor-General), should have served the Crown

for at least ten years. Naturally Indian opinion was more vocally heard in the council and it became a little more difficult to oppose the views of an Indian member determined to carry out his own policy in his department.

It is necessary to add that the members continued to be officials set to preside over their own departments under the all seeing eyes of the Governor-General meeting occasionally to discuss questions of general policy. The setting up of the Indo-British telephone system increased the custom of direct consultation between the Governor-General and the Secretary of State. This tended to ignore the Council. The emergence of questions of 'high policy' which were really matters for the British Government to decide further reduced the status of the members. But in the administration of their departments the members held their own and here the increased Indian membership resulted in bringing the administration nearer to Indian public opinion.

At the centre the position was rather difficult. Most of what was said of the Morley-Minto Councils in the provincial domain now applied to the central government. But there was this difference. Whereas the Morley-Minto councils formed a blind alley, now there was the pleasant prospect of 'responsible Government' beyond.

It was in the provinces that popular government on a small scale was tried. Before this could be done, several preliminary steps had to be taken. Devolution of powers to the provinces had to be extended and put on a sure footing. Instead of the existing delegation of authority by the central government to its provincial agents, a list of provincial subjects was prepared by the Governor-General in Council and promulgated after it had been approved by the Secreaary of State in Council. The central government resigned its authority in the provincial matters to the provincial government. The provincial subjects

were further subdivided into reserved and transferred subjects. As we have seen above the right of interference enjoyed by the Secretary of State in Council and the Governor-General in Council in the transferred subjects was very much restricted. The reserved departments were subject to the direction, control and supervision of the Governor-General in Council as well as the Secretary of State in Council. The division of provincial subjects was based on the relation of the legislature to the executive. The transferred departments were run in accordance with the direction of the provincial councils by the Governor with the advice of ministers appointed by him to hold office during his pleasure. The reserved subjects were administered by the Governor in Council.

The provincial councils to which the control of the transferred subjects was entrusted were considerably enlarged. The Act laid down that the number of members would vary from at least 53 in Assam to at least 125 in Bengal. In practice the number varied from 140 in Bengal to 53 in Assam. Out of the total strength not less than 70% were elected and not more than 20% were officials. The rest were nominated non-officials. The following table shows the distribution of the members of various categories in the provinces.

Province	Elected members	Officials	Nominated non-officials	Grand Total
Madras	98	11	23	132
Bombay	86	19	9	114
Bengal	114	16	10	140
United Prov.	100	17	6	123
Punjab	71	15	8	94
Bihar & Orissa	76	15	12	103
Central Prov.	55	10	8	73
Assam	39	7	7	53
North West Frontier Province	39	7	7	53

These 678 elected members were elected directly by primary voters. Most of the constituencies were general i.e. they represented the people at large. But the universities, trading corporations and landlords were represented by special constituencies consisting of the registered graduates, the chambers of commerce or other mercantile associations and landlords paying a very large amount as land revenue.

The voters in special constituencies had double votes. They exercised their franchise in the general constituencies as well. General constituencies were further divided into urban and rural. These again were of two classes. Exclusive communal electorates were set up for Muslims, Sikhs in the Punjab, Indian Christians in Madras, Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar and for Anglo Indians in Madras and Bengal. The inclusive constituencies returned members belonging to other than these communities by an electorate composed of the population in general except the classes otherwise provided for. Even in the 'inclusive' constituencies seats were reserved, 29 for non-Brahmins in Madras and 8 for Marathas in Bombay. The Montford scheme condemned the weighted and separate representation of Muslims in the provinces where they were in a minority as destructive of that feeling of nationality on which alone representative Government could be based. But in view of the Lucknow pact between the Muslim league and the Congress it recommended its extension to the Sikhs in the Punjab. The joint select committee however extended separate representation of the Muslims to the Punjab and Bengal where they were in a majority and where there could be no question of their being not fairly represented. The rules made under the Government of India Act, 1919 extended the vicious principle of 'communal representation' by separate electorates to Indian Christians, Anglo Indians and Europeans and granted to these classes representation much in excess of their percent-

age of population and voting strength. The Indian Christians who formed 3·2% of the population and 1·8% of the total voting strength were given 5·3% of the total elected seats in Madras, The Anglo-Indians whose population nowhere exceeded ·05% of the population were given seats which represented from 1% in Madras to 2·1% in Bengal of the total seats and the Europeans whose population varied from ·02% to ·2% were given from 1·1% to 5·3% of the representation.

CHAPTER XVII

DYARCHY IN OPERATION

On April 1, 1921 dyarchy was introduced in the Punjab, the United Provinces, Bihar, Bengal, Assam, Madras, Bombay, and the Central Provinces. In 1932, the North Western Frontier Province became a Governor's province and thus joined the ranks of the older provinces. All these nine provinces were governed under the Government of India Act, 1919 till April, 1937. During this period 'dyarchy' ceased to function in the Central Provinces from 1924 to 1926 and in Bengal from 1924 to 1927 and again for some months in 1929. During the sixteen years that lay between dyarchy and provincial autonomy, dyarchy changed its form several times mostly because its working depended on men and very little on institutions. The provisions of the Government of India Act were expected to be supplemented by conventions which had been recommended. The Report of the Joint Select Committee and the Instrument of Instructions to the Governors had suggested certain conventions the adoption of which might have made its working less irksome. But very few Governors believed in dyarchy as a workable system of administration and fewer capable Indians could be discovered willing enough to run the transferred half of the Government under what to them seemed to be its galling restrictions and humiliating assumptions.

The Governor in Council was responsible for finance, land revenue, famine relief, justice, police, pensions, criminal tribes, printing presses, newspapers, books, irrigation and waterways, mines, factories, electricity, gas, boilers, labour welfare, industrial disputes, motor vehicles, minor ports, excluded areas and

public services. The Governor decided the subjects that were placed before the weekly meetings of the Executive Council, fixed its time, presided at its deliberations, recorded its decisions and saw them carried out. The Council consisted of from two to four members. Every member was put in charge of a department and settled all minor questions rising therein, if he agreed with the proposals put forward by his secretary. All matters of major importance, all questions of disagreements, between a members and a secretary, projects of legislation, questions concerning public services, differences of opinion between various departments and despatches to the Government of India or the Secretary of State were placed before the Council. The decisions were taken by a majority of members present. The Governor had a casting vote in case of a tie. If in the opinion of the Governor the interests of the province demanded it, he could override the decision of the majority of his Council. The majority knew it and seldom gave a Governor the chance of exercising his power.

On the transferred side, the ministers advised the Governor with respect to education, libraries, museums, local self-government, medical relief, public health and sanitation, agriculture, co-operative societies, veterinary department, fisheries, forests (in Bombay only), public works, excise, registration of deeds, vital statistics, industries, weights and measures, prevention of adulteration, regulation of betting, preventing of cruelty to animals, control of public entertainments and religious and charitable endowments. Unlike the reserved half, the ministers had no corporate existence. The law did not require any full meetings of all the ministers together to take decisions on all transferred subjects. The Governor dealt with each minister individually. The minister could issue orders on minor matters if he agreed with his secretary. All cases of disagreement between the two were decided by the Governor. Orders in the transferred half of the Government ran in the name of the

individual ministries whereas all orders of the Governor-in-Council were issued on behalf of that body over the signature of the departmental secretary.

Secretaries of all departments met the Governor every week and discussed with him the problems of their departments. They also supplied the Governor with a weekly report on the progress of work in their department. These reports were compiled by them on their own, the members and the ministers were supplied with copies after the originals had been submitted to the Governor.

On matters of common concern, particularly on allocation of revenues of the province, there was joint consultation between the reserved and the transferred halves of the government. The Governor presided over these meetings and if the two halves of the government could not agree, he decided the total amount of revenues to be spent by each side. As finance fell within the reserved half of the government, the ministers had to submit all their proposals for appropriation of revenues to the Governor-in-Council in the finance department long before the final allocation of revenues took place. Thus the Governor-in-Council came to these conferences forewarned about the demands made by the ministers whereas the ministers knew nothing of the proposed expenditure in the reserved departments when they came to the joint meetings. They felt that the finance department accorded them a stepmotherly treatment. All the transferred departments except the excise were spending departments as well as 'nation building' departments. Ministers often claimed that more money was needed for the expansion of the activities of these departments. The finance department usually suggested higher taxation without at the same time conceding that all the receipts of increased new taxation would be earmarked for the use of the transferred departments if the ministers shouldered the responsibility for such an unpopular policy.

It was claimed by some official witnesses that joint meetings were not always confined to matters of financial concern. In some provinces—in Madras for example—joint meeting of both halves of the government were the rule rather than the exception as both the ministers and the Indian Executive Councillors insisted on the same and were supported by the Governor. But in most other provinces joint meetings and consultations were usually held when the reserved half felt it necessary to carry the ministers with them in their measures. Some of the ministers declared that even in such cases all official papers previously circulated to members of the council were not made available to them

Besides finance, public servants serving in the transferred departments were under the control of the Governor-in-council. The difficulty of the ministers was aggravated by the fact that they seldom had secretaries dealing with their subjects alone. The ministers were assigned 'portfolios' made up of items from various departments of the provincial secretariat. Seldom had a minister a secretary whose entire work the minister supervised. In most of the provinces a minister dealt with several secretaries; not one of whom would feel himself responsible to the minister for his work. The direct access to the Governor which the secretaries enjoyed placed the ministers in an invidious position which was made all the worse because they had to secure the support of the Governor before they could overrule their secretaries. As their local representatives, several transferred departments had to depend on officials who were working mainly in the reserved half. The work in the excise, registration, vital statistics, weights and measures, prevention of adulteration and of cruelty to animals, control of gambling and betting, religious and charitable endowments, and local self-government departments was carried on by the district administration. The collectors claimed an all supervisory brief in other departments like education, public works,

agriculture, medical relief and public health, veterinary relief, and co-operative credit societies as well. Thus even when the ministers had specialised agencies of their own, public servants forming these departments discovered that usually it was more profitable to keep on the soft side of the collectors than obey all the orders of the ministers they served. Discipline was thus undermined as public servants had no reason to fear the powers of the minister or entertain hopes of betterment on account of their favours. All postings, transfers, promotions, demotions and disciplinary orders about public servants were made by the reserved half and ultimately the Governor.

Public evidence of ministers and retired civil servants as well as official memoranda would make us believe that relations between the ministers and the civil servants serving under them were very cordial. Public evidence could not but take that form. Few civil servants entertained any doubts after 1927 about the progress of India towards self-government. It would have been foolish for them to parade their difficulties, if any, with the ministers. The ministers could not well be expected to make a public exhibition of themselves by declaring before official committees and commissions that, while in office, they had not been able to control their subordinates. The pages of contemporary press, the proceedings of provincial legislatures, the achievements (or want thereof) of the various ministers provide an eloquent testimony to the antipathy of the members of the All India Services in the carrying out of the ministerial policies and their lack of support in providing inspiration to ministers.

The Governor was thus the pivot of provincial administration. He could take any action he liked in the reserved departments in the interests of the province. On the transferred side, he could issue orders on his own when he felt that there was 'adequate reason' for action to be taken 'otherwise than in accordance with the advice of the ministers'. He allocated

the provincial revenues between the two halves. He gave an immediate decision in case of a dispute between the two halves as to which side should deal with a question in dispute. He ordered transfers and postings of the members of the provincial and imperial services and decided, subject to appeal ultimately to the Secretary of State in Council, all questions involving any action against members of the two sets of services. Further, if administration of the transferred subjects through ministers became impossible, he could temporaily take over their administration in his own hands subject to the approval of the Secretary of State. He made recommendations for the conferment of honours. He was responsible for the administration of the excluded areas in his province and was specially charged with the care of the backward tracts.

The Governor appointed the ministers to hold office during his pleasure. He recommended names for appointment as members of the executive council and judges of the High Court. His recommendations usually carried weight in the appointment of the non-service members of the council or judges of the High Court.

The provincial legislature consisted of members nominated by the Governor and elected under the rules. The nominated members could form not more than twenty per cent of the total membership. Not more than 16% of the total could be officials. In actual practice when the Simon Commission reported, the percentage of the nominated members was much smaller as shown by the following figures.

	Bengal	Bombay	Madras	C. P.	U. P.	Bihar	Punjab	Assam
Total number of members	140	114	132	73	123	123	94	53
Nominated members	26	28	34	18	23	27	23	14
Nominated official members	16	19	11	15	17	15	15	7

The Joint Select Committee had recommended that except the Executive councillors all other official members should be free to vote as they liked. This was disregarded. The official block voted as the Governor instructed it to vote. Care was taken to see that only such non-officials were nominated as would follow the official whip. Thus the Governor had a large number of votes at his disposal.

The conduct of elections to the provincial legislatures was under the Governor-in-council. The preparation of electoral rolls, the calling of nomination of candidates, the scrutiny of the nomination papers, the selection of polling stations, the appointment of presiding and polling officers were carried on by the reserved half. But it was the Governor who summoned the legislature, prorogued its sessions, dissolved it before the expiry of three years or prolonged its life for a year longer. He entertained election petitions, appointed commissinors to enquire into disputed elections and issued orders after taking into consideration their reports.

The Governor appointed the first president of the legislature and filled in any subsequent vacancies during the first four years. The legislative council elected its own president thereafter subject to the approval of the Governor.

The Governor was no longer a member of the legislature. But the first standing orders were made by the Governor-in-Council and subsequent alterations in them required his approval.

After their passage in the legislative council all bills were placed before him for his consideration. He could kill a measure by his refusal to assent to it, he could return it for reconsideration by the legislative council, he could reserve it for the consideration of the Governor-General or assent to it. His assent was vital to its promulgation as law. If he thought any law necessary for the tranquillity, safety, and in the public interest of the province, he could promulgate it as an Act even if the council had rejected it or introduced amendments not

acceptable to him. Similarly he could stop further proceedings on any measure if he came to the conclusion that such proceedings would be harmful to the public interest of the province.

The Governor fixed the amount of expenditure to be incurred on non-votable items excluded by the Act from a vote of the legislature. If the legislature refused grant for any item of the budget for the reserved department or cut it down, the Governor restored the cut or authorized expenditure in the rejected vote. On the transferred side, he could flout a vote of the legislature by authorizing expenditure for carrying on the administration of the province to the extent of the moneys voted for the subject or subjects in the last year's budget.

Thus nothing could happen in a province in opposition to the Governor. He did not always resort to the exercise of his legal powers. The very fact that he had the ultimate power to act affected others in their course of action. When, as in Bengal and the Central Provinces, legislative majorities exercised their legal powers to wreck dyarchy, the Governors snatched the privileges of doing so from their hands by throttling dyarchy and established gubernatorial autocracy in their provinces.

The position of the ministers was thus not very happy. Appointed by the Governor to hold office during his pleasure, a minister could, in the absence of party backing, remain in office only so long as the Governor gave him his support. There was no Council of Ministers where the ministers could meet to devise joint action. Most of the Governors encouraged their ministers to stand aloof from one another. This naturally promoted intrigues and even public display of difference among ministers. A minister could push no question to the extreme and back his opinion by popular support in and outside the legislature. The official block which a Governor controlled enabled him to defy any minister however popular his programme. No Governor experienced any difficulty in finding new ministers if and when his opposition drove those in office

to resignation. In Bengal the Governor was able to persuade a minister to remain in office even when his salary had been refused by the legislature. The lack of political parties and existence of communal blocks enabled the Governor to be the government making organ in the province. The ministers some time had to depend on the Governor's good offices in making some of their public servants carry out their policy wholeheartedly. The evil practice whereby some of the ministers were persuaded to change into irresponsible (to the Council) executive councillors placed a temptation into the hands of some Governors whereby they succeeded in seducing some ministers. The ministers had to depend on the Governor again in enforcing discipline among their public servants who could easily flout, if not their orders, at least their known wishes. In securing much needed cash from the provincial revenues or balances, the ministers looked to the Governor to help them in the discharge of their duties.

Most of these things might have been avoided but for the fact that power had passed for the first time into Indian hands. As we were not responsible for the entire government of the country, it was difficult to divide on political issues concerning education, excise, medical relief or local self-government. The lust for the exercise of power newly made possible found expression in the formulation of the new and strengthening of the old communal or thinly guised communal parties. So far loyalty to the rulers had paid since the days when some power started passing into the hands of Indians. New communal parties made much of their dependance on, and therefore loyalty towards, the British rulers of India. The belief that the transfer of power from British hands would take considerable time led to buttressing for positions in alliance with the British. As the administration of the transferred subjects in most of the provinces proved, there was not much difference of opinion among politically intelligent people as to how these depart-

ments were to be run. Political cleavage was another name for communal cleavage. The one political organization in the country was busy in the bigger problem of securing early transfer of power from the British into Indian hands. The long tenure of the Conservative party in office gave reason for alarm in India as to the ultimate goal of the British policy in India. Thus politically conscious classes were busy fighting for the recognition of India's right to dominion status whereas the pressure groups in the country were exclusively interested in gaining 'communal' advantages for themselves.

The provincial legislatures now became nerve centres of the administration. Both sides of the government were anxious to enlist the support of the legislature for their policy if not always to secured a mandate from it. As we have seen above, at least 80% of the legislature consisted of elected members. But they were not all returned by territorial constituencies as in England or the British Dominions. The following table will show the composition of the council in the various provinces.

	Madras	Bombay	Bengal	U. P.	Punjab	Bihar	C. P.	Assam
Total No of elected members	98	86	114	90	71	76	55	39
No of General Constituencies	85	75	92	80	64	67	48	33
Seats not reserved	37	39	46	60	20	48	41	21
Reserved seats	28	7	...	...	...	...	...	...
Muslim seats	13	27	39	29	32	18	7	12
Anglo Indian seats	1	...	2	...	...	...	...	...
European seats	1	2	5	1	...	1	...	...
Indian Christian seats ...	5	...	...	...	...	...	...	...
Sikh seats	...	...	...	...	12	...	...	...
Special functional seats ...	13	11	22	10	7	9	7	6
Nominated seats	34	28	26	23	23	27	18	14
Total membership	132	114	140	113	94	103	73	53

This distribution of seats provided that nominated members and elected members from pressure groups combined together in most provinces formed a clear majority. The non-reserved territorial seats number 37 out of 132 in Madras, 39 out of 114 in Bombay, 46 out of 140 in Bengal, 20 out of 94 in the Punjab, 48 out of 103 in Bihar, 60 out of 113 in the United Provinces, 41 out of 72 in the Central Provinces, 21 out of 52 in Assam. Thus the representatives of general non-reserved constituencies were in majority in the United Provinces and the Central Provinces alone. Further it is unreasonable to father all this division on the Lucknow Pact of 1919 between the Congress and the Muslim League. The Pact made no separate provision for Sikhs, Europeans, Anglo-Indians and Indian Christians. Nor did it allow the special constituencies the place they occupied in the Act. The fissiparous tendencies of the Act favoured the rise of pressure groups rather than political parties.

Members were elected by single member constituencies. Nominations of candidates were received by a specified date well advertised. A little later the nominations were scrutinized by officers appointed by the provincial government. Appeal lay against their decisions through an election petition filed after the election was over. A candidate had to be of sound mind, solvent, with no criminal record. The last disqualification could be removed by the Governor on a petition accepted before the filing of the nomination papers. Every candidate was proposed by one voter and seconded by another. He had to deposit a security as a sign of his good faith in seeking election. In territorial constituencies the candidate had to be a resident of the constituency in most of the provinces. A date or dates for polling were fixed. Every constituency was divided into several polling districts. A voter could vote in his own polling station alone. He received his ballot paper from the polling officer where the identity of the voter could be

challenged by the agents of the candidates. The voter passed into the room reserved for balloting where the presiding officer sat with the ballot box in his front. Here the voter marked his ballot paper and dropped it into the ballot box. Various devices were used to make it possible for a voter to recognize his candidate if the voter was illiterate. Some voters asked the presiding officers to mark their ballot papers for them. Of course this destroyed the secrecy of the ballot.

When the closing time came, the ballot boxes were sealed and deposited in a safe place. A day was appointed for counting votes. This took place in the presence of agents of the candidates who sometimes secured a recount if the difference of votes was very small. The result of the counting was declared immediately but a member did not become an M. L. A. till his name was published in the official gazette of the province.

Election over, the candidates submitted their account of expenses. Failure to do so disqualified a candidate for five years. The maximum of the total expenses was laid down as also the various items on which money could be lawfully spent and the amount of money assigned for each item.

Election petitions were filed against the wrong decisions given by the scrutinizing officers. The use of unfair means and resort to corrupt practices by a candidate rendered him liable to an election petition and eventual punishment by the Governor. To invoke God or gods on a candidate's behalf and to threaten religious penalties on a rival's head rendered a candidate liable to punishment. Treatment of voters was a corrupt practice. To bring voters in hired taxis or busses to the polling station was a corrupt practice but to give him a free ride in a private taxi or bus was permissible.

Franchise was low for a population first brought to exercise the vote. But the division of constituencies into special and general and fragmentation of a general constituency into commu-

nal conclaves retarded rather than favoured the political education of the voters. All sorts of appeals were made to the voters that had nothing to do with provincial administration. Constituencies were usually large and were made all the more unwieldly because of their sub-division into so many communities. The ties between the voter and his favourite candidate were not always close, nor very often political.

The Governor summoned a new legislature to meet at a time and place specified in the notification. The members present took the oath of allegiance to the Crown. In the first council and the first session of the second council, they dispersed after the swearing in ceremony to meet again later on. They then met to elect the President (after 1925) and the Deputy President. The President announced a panel of chairmen one of whom presided in the absence of both the President and the Deputy President. The salary of the nominated President was fixed by the Governor, the elected President and Deputy President were paid salaries as fixed by the Council.

The presiding officer controlled the proceedings of the legislature. The President and in his absence the Deputy President exercised their functions in and outside the legislative chamber and even when the chamber was not in session. The House acted under the standing orders made by the Governor and Rules of Business framed by itself. The presiding officer interpreted these rules and was helped in the discharge of his functions by 'points of orders' raised by members. These drew his attention to an alleged infringement of the rules of procedure by a member or a non-member. The presiding officer some times left the decision to the judgment of the House or delayed judgment by asking for time for it. Most councils had secretaries of their own appointed with the approval of the President. The Sergents-at-Arms were appointed in some councils to help the President in maintaining order. No member could address the chamber unless called upon to do so by

the President. The member in possession of the house addressed his remarks ostensibly to the President who called a speaker to order if he found him offending against the rules or the conventions of the house. As soon as the President stood in his seat, the member addressing the house sat down to resume his speech when the presidential interlude was over. Members enjoyed freedom of speech in the House but this was not extended to a fair report of those speeches in non-official publications.

Members of the House performed several important functions. They subjected the administration of the province to scrutiny by asking questions and following them up by supplementaries. These were not confined to the member originally asking a question : any other member of the house who felt dissatisfied with the original answer could pursue the matter by supplementaries. Questions were confined to eliciting factual information only. Usually a fortnight's notice was required for a question in order to enable the Government to collect information in reply. But by previous arrangement with the executive councillor or the minister-in-charge of a department, short notice questions were admitted.

The existing right of moving resolutions was now supplemented by the right to move motions for the adjournment of the house to discuss urgent questions of important public interest. Moving of resolutions, like asking of questions, required previous notice. But whereas all questions asked were usually answered in the daily hour allotted to them, non-official resolutions could be discussed only on the days set apart for such business by the Governor. Thus many of the resolutions tabled were sure of lapsing for want of time. The precedence in discussing resolutions was determined by ballot. There could be no hope therefore that a new resolution should find time for discussion at short notice. But important questions were sure to arise when the house was in session. The English method

of discussing such questions was followed by discussing them as motions for adjournment of the business of the House. Notice of such a motion was handed in to the secretary of the legislature immediately after the termination of the question hour. The President then read the motion aloud to the House if he found it admissible. This depended on the urgency of the question raised, judged by the fact whether the notice had been given as soon as the member got information about the matter. Only questions of public importance could be admitted. No motion could be admitted on a question which had been raised by a resolution already admitted. A motion could be refused by the President if he found that the matter could be raised early enough in discussion on the budget, supplementary estimates, or excess grants. A motion for adjournment interrupted the regular agenda of the House. The President usually took up such a motion at 4 P. M. of the day on which notice was given. The discussion lasted only two hours after the expiry of which the House adjourned if the motion had been carried. Otherwise the motion stood talked out. A motion for adjournment was usually tabled in order to discuss a sin of omission or commission of the administration. If the mover was satisfied by the explanation given by the government, he would withdraw it. If he was not satisfied, he could move a closure of the debate before the expiry of two hours and force a division. An adverse vote on a question arising in a transferred department would be taken as a vote of no confidence in the minister in charge of the subject.

Another method of subjecting the conduct of a minister to scrutiny was by a straightforward vote of censure of his policy or the legislature's want of confidence in his conduct of administration. Such motions were not necessarily taken the same day. If passed by the legislature, they could bring about the resignation or dimissal of the minister concerned.

The legislature made laws on the subjects entrusted to its care. All measures received three readings in the House. The first reading was concerned with the general principles of the proposed piece of legislation. Discussion on the general policy of the measure over, it was either circulated for eliciting public opinion or entrusted to a Select Committee for its detailed consideration. The minister or the councillor in whose department the bill fell usually presided over the Select Committee on the measure. The report of the Select Committee was then presented to the house and the measure was considered clause by clause by the whole House. In its final form the bill was once again subjected to a general criticism in its amended form and read a third time.

The House also considered and granted votes for grants out of provincial revenues. The entire budget was submitted to the House departmentwise. Expenditure on transferred departments was considered separately from that to be incurred in the reserved departments. The salaries of the Governor, members of the Executive Councils, civil servants belonging to the imperial services, judges of the High Court were not subject to the vote of the Council. Debt charges or reconvension charges as well as expenditure the amount of which was fixed otherwise by law were non-votable. The Governor could however allow discussion on non-votable items except his own salary and allowances and salaries and allowances of the judges of the High Court. The amount necessary for non-votable items was fixed by the Governor. During the discussion of grants on votable items members could move token or substantial cuts. Token cuts were moved in order to discuss the policy of the administration covered by the grant. Substantial cuts were measures of economy or some times votes of censure on the conduct of the government. Following the English parliamentary usage, the members could not move that the grant to any department be raised except through a

tion when the candidates canvassed popular opinion by discussing political questions, hitherto reserved for consideration by the bureaucrats only, with the humblest of the voters. Though there was a high property qualification for provincial voters, in some provinces it was extended to a large number of men and women some of whom did not possess the right to vote for local bodies. The membership of the legislatures was very much enlarged, in most cases it was quadrupled. Three fourths of the entire membership were now elected. In composition and atmosphere, the new provincial legislatures were distinctly akin to Parliament rather than to the committees of officials buttressed by some non-officials that the old councils had been. From the very beginning every council had a secretary and a deputy president of its own. After four years every council was presided over by a president elected by the members. This emancipated the councils from their complete dependence on the provincial administration. The rules of business though approved by the Governor were now made by the legislatures themselves and usually followed the parliamentary fashion. The ministers and members of the statutory finance committees and the public accounts committees had a look into official secrets which had been jealously guarded so far. The advisory committees which were attached to some departments in several provinces had similar opportunities in their own departments. The ministers now shouldered the responsibility for the policy their departments followed and issued orders to the seniormost white bureaucrats serving under them. In the transferred departments the recruitment of non-Indian civil servants gradually but progressively came to an end. Before the dyarchy came to a belated end, most of the heads of transferred departments were Indians in almost all the provinces. The presence of Indian ministers as the political heads of several important departments naturally accelerated the pace of Indianization of

the Imperial services. No longer could a senior Indian civilian rot all his life as a district officer with a short spell of the charge of a division towards the end of his career. The nature of the provincial government now changed materially. Unlike the foreign bureaucracy, Indian ministers were not afraid of touching the pitch of social evils for fear it might defile them. Several creditable pieces of social legislation were undertaken which would have shocked the conscience of the neutral foreign rulers of the country.

But above all, the working of the provincial governments during these sixteen years dissipated a much cherished illusion. No one could glibly talk of the doubtful value of introducing western democratic institutions too rapidly in India in 1929 much less in 1935. Indians had made as good parliamentarians as the Britishers in the seventeenth century under similar circumstances. If Dass and Raghavendra Rao strained the letter of the law and claimed rights and privileges which the Government of India Act had not granted to the ministers or the legislatures, they were no worse than Hampdens and Wentworths, Walpoles and Pitts in English History. Indians followed their British masters to the extent of inventing such myths and fictions as suited their purposes.

CHAPTER XVIII

ADMINISTRATIVE AND CONSTITUTIONAL REFORMS

[1918 TO 1937]

The twenty years from 1918 to 1937 saw many an advance which though not always clothed into statutory forms had great constitutional importance. It would be best to study them together in this chapter.

While Mr. Montagu was still in India, the Government of India issued a Resolution on Local Self-Government in 1918. Though Mr. Montagu found it disappointing, it harped back to the days of Lord Ripon who had boldly proclaimed that he was prepared to sacrifice administrative efficiency to political education. It suggested an elected majority on all boards, the replacement of official chairmen by elected non-officials in municipalities and where possible, in rural boards, the lowering of franchise, and representation of minorities by nomination. It proposed that experts be nominated where necessary for discussion and advice without the power of voting. The orbit of official control, it was suggested, should be strictly circumscribed. It laid fresh emphasis on the advisability of developing 'corporate life of the village.' Some immediate action was taken on some of these suggestions but the task of clothing them in substantial form fell to the new provincial governments constituted under the Government of India Act, 1919. The most comprehensive measure in urban self-government was the Corporation of Calcutta Act sponsored by Surendranath Bannerji as Minister of Local Self-Government in Bengal. He had himself resigned from the Corporation early in the twentieth century as a protest against its administration passing

into official hands. He made the new Corporation a statutory independent body electing its own Mayor and Chief Executive Officer and otherwise exercising many of the functions of the British county boroughs. The lowering of franchise in municipalities gave votes to 14% of the urban population. In every town the majority of the councillors was elected, four fifths of them in Bihar and Orissa. Before our period closed, 91 per cent. of the 749 municipalities had elected chairmen. The transfer of new financial heads to provinces allowed the municipalities to vary their taxation schemes. In the district boards, the franchise though lowered gave the right to vote to only 3.2 per cent of the population. Chairmen came to be elected in all provinces except the Punjab. The majority of the members here again was elected. The Panchayats in the villages took root in the United Provinces, Bengal and Madras and made little substantial progress in other provinces.

The introduction of dyarchy in the provinces and the generous terms granted for proportionate pensions to members of the imperial services resulted in the retirement of 345 officers by 1924 before the end of the normal period of service. This left a void difficult to fill normally. Indian opinion demanded that effect be given to the promise of increasing association of Indians in every branch of administration made in the declaration of British policy in 1917. This demand was all the stronger because the equality of opportunity promised to Indians in the Charter Act of 1833 had never materialized. The repetition of this promise in the Queen's Proclamation had similarly borne little fruit. Indians demanded no favours and no lowering of standards. But a Civil Services Act passed in 1861 had again proved abortive. Another Act was passed in 1870 which laid down that under rules framed by the Governor-General in Council suitable Indians of proved merit be admitted to some of the posts usually filled on the result of the competitive examination in London.

In 1879 rules were framed to provide that one sixth of the total vacancies each year should be filled by the Governor-General on the recommendation of the local governments. This paved the way for the appointment of Anglo-Indians, Eurasians and scions of the old ruling classes to these posts. These civil servants failed to hold their own with the British civil servants. On the recommendation of the Aichisson Commission in 1892, it was decided to fill one sixth of the annual vacancies by promotion from the provincial services. These statutory civilians were paid salaries much lower than those paid to the covenanted civilians. The publication of the report of the Public Service Commission under Lord Islington was delayed on account of the War. The fulfilment of the new pledge of increased association of Indians in administration demanded brisker action. The Royal Commission on Superior Services under Lord Lee was charged with the double task of finding means of drawing capable Englishmen to Indian Services again and of devising an agency for the recruitment of able Indians to the service of the Crown. It secured the second object by instituting a competitive examination in India to fill vacancies reserved for Indians in the Civil Service. The stoppage of further recruitment in England for the Indian Educational Service, the Indian Agricultural Service, the Indian Veterinary Service, and the Indian Service of Engineers (Roads and Buildings) implied that normally no non-Indians would be recruited to these services. The Commission, however, declared that it was necessary to secure, for as long as it could see, that a substantial number of posts in the two security services, Indian Civil Service and the Indian Police Service, continued to be filled by Englishmen. Twenty per cent of vacancies in the posts usually reserved for the covenanted services were henceforward to be filled by promotion from the Provincial Civil Service. Of the rest half the annual recruitment was to be Indians, half British. In the Indian Police, five Britishers

were to be recruited for three Indians every year. In the Indian Service of Engineers, Indians and Europeans were to be recruited in equal numbers whereas in the Indian Forest Service, three Indians were to be recruited to every Englishman entering service. The Commission's proposal secured that the number of Indians and Englishmen should be equal in the Indian Civil Service and the Indian Service of Engineers by 1939 and in Indian Police by 1949.

Welcome as these proposals might have been if left alone. the preoccupation of the Lee Commission with its first problem made its report suspect in the eyes of the Indian legislature. It recommended an increase in the over-seas allowances granted to recruits in England and allowed an English member of the superior services to remit his entire over-seas allowance at the rate of 25 d. to the Rupee. As the prevailing rate of exchange was 1 s. 6 d. to a Rupee, an English member of the Service got Rs, 4 as over-seas allowance for every Rs. 3 received by his Indian colleagues. Indian Members recruited in India were not entitled to receive this allowance.

The Government of India accepted these proposals despite a hostile vote in the legislature. The Public Service Commission was entrusted with the task of conducting competitive examination for recruitment in India. It extended the wholesome systems of competitive examination to several central services. The Indian Audit and Accounts Service including its military and railway branches, soon came to be recruited by the Imperial Public Service Commission. Its example was catching. Soon the provinces also set up Public Service Commissions of their own for recruitment to several provincial services.

Did the increased association with every branch of administration cover the Army as well? Indians held that it did and based their campaign for the Indianization of the army

on the preamble of the Government of India Act. The Army was at this time completely officered and entirely staffed by Englishmen. The first king's commission to an Indian was granted in 1918 after the declaration of British policy in India. Indians filled the ranks of the army and in the Indian army held Viceroy's Commissions performing the duties of British Warrant Officers. The Commission was granted by a slow process of promotion from the ranks so that the highest Viceroy's Commission ranked lower than the rawest lieutenant in the army. Here the British interests proved adamant. It was asserted that the British predominance of army officers in India was justified by the task of external defence and of internal security which the army in India discharged. The first breach in the British citadel was the grant of the King's Commission to an Indian of proved military conduct in 1918. This was however a case of promotion from the ranks. Ten vacancies a year were now reserved for Indians at Sandhurst for the grant of King's Commission at the end of the training in the cavalry and the infantry. In 1923 came the establishmnet of the Indian Territorial Force and the University Training Corps admitting Indians for the first time as volunteers under training and ultimately a potential reserve of military strength outside the ranks of regular soldiers. The same year saw the birth of the eight units scheme, which segregated Indian Commissioned Officers to five selected infantry battallions, two specified cavalry regiments and one pioneer unit. All Indian officers granted Commissions were to be attached to these units so that it was expected these eight units would be commanded and completely officered by Indians by 1946. At this rate the entire Indian army consisting as it did of 132 units would have come to be commanded and entirely officered by Indians in 368 years ! The Skeen Committee was consequently appointed in 1925 to explore the means of accelerating this pace. The Committee unanimously recommended that 20 vacancies instead

of 10 be offered to Indians every year at Sandhurst immediately to be progressively raised till a Military College was established in India in 1933. It thus hoped that by 1952 half the cadre of officers in the army would be Indian. It condemned the eight units scheme and suggested that Indian officers be distributed to all the units so that they should serve shoulder to shoulder with the British Officers. Even though the committee had been presided over by the Chief of the Staff in India and had the Army Secretary as another member, it took the Government of India fifteen months to announce its decision on its recommendation. The eight unit scheme was not abandoned, the establishment of an Indian Sandhurst by 1933 was not accepted. The number of vacancies offered at Sandhurst was raised to 20 and a limited number of vacancies in royal engineers, artillery and air force was offered at Woolwitch and Cranwell. The Legislative Assembly strongly condemned the policy of the government in repudiating the unanimous report of its own committee. In 1931 an Indian Military College Committee was appointed under the Commander-in-Chief of India. Its recommendations led to the establishment of an Indian Military College at Dehra Dun admitting 60 cadets every year from British India. Ths decision was robbed of all its grace when it was announced that in the units to which Indian officers were being attached, the Indian Commissioned officers would not only replace the former British commissioned officers but the Indian officers holding the Viceroy's Commission as well. This meant that there would be 30 Indian Officers in an Indian battalion as against 12 in a British battalion thus casting a slur on the capacity of Indian Officers. Further the intake of sixty officers a year under the new scheme was to serve the same purpose which the deputation of 24 trainees to England would have served under the old scheme. It was now announced that instead of eight units previously selected a full division was now to be Indianized.

At this rate the entire Indian Army would have been officered by Indians in about 150 years!

Another significant advance was the invitation to the Government of India to participate in the Imperial Conference held in London in 1917. Of course, the Indian delegation was led by the Secretary of State for India, himself a member of the British Cabinet. It seemed to place India at par with other self-governing dominions to whom the invitation had so far been limited. This was followed up by the nomination of Lord Sinha to the Imperial War Cabinet. He was raised to the peerage and appointed Under Secratary of State for India. When the First World War came to an end, India was invited to participate in the Peace Conference that followed. She signed the treaties of peace with the central powers along with other sovereign and quasi-sovereign nations of the world. She became an original member of the League of Nations and participated in the various meetings of the parent body and subsidiary agencies. The Indian delegation to most of these conferences was usually led by the Secretary of State for India. Even when he was not there in person Indian representatives received their instruction from him rather than the Government of India. The foreign policy of India was substantially determined by him. But the inclusion of Indian public men of proved ability in the Indian delegations gave the rest of the world some foretaste of the forensic and constitutional ability which India possessed. The Indian representatives further succeded in raising the question of the deterioration in the status of Indians in the mandatory territories supposed to be governed under the general direction of the League of Nations. Otherwise India's participation in the international conferences only placed a convenient additional vote at the disposal of the government of Great Britain.

A question of some constitutional importance was raised by the attitude of British dominions and crown colonies towards

Indians domiciled in their territories or seeking entry there. Indian labour under contracts of various sorts had been welcomed in various parts of the British empire. Most of these contracts had been sponsored by the governments of the territories where the Indians served. Kenya, British East Africa, South Africa, Ceylon, Fiji, Trinidad and Mauritious had employed such labour in the past. Some of these still needed Indian labourers. The original contracts had stipulated for the free passage back to India of her emigrants at the expiry of the stipulated term of service. But most of them elected to stay as free men in the countries of their domicile. Towards the end of the nineteenth century, the treatment of these colonists in South Africa raised indignation in India. Early in the twentieth century the problem became still more acute. Mahatma Gandhi led passive resistance to the outrageous measures of the South African Government in imposing segregation on Indians in trains, busses and residential quarters. Lord Hardinge as Governor-General of India voiced the feelings of all Indians in a strongly worded despatch to the Secretary of State for India on the question. Gandhi-Smuts agreement of 1914 repealed the poll tax of £3 on Indian residents in South Africa, validated Hindu and Muslim marriages if they were monogamous. Indians already domiciled in South Africa were allowed to bring one wife and minor children to South Africa. To serve the Indian residents in South Africa in professional and cultural capacities, a restricted number of Indians were to be allowed to settle in South Africa. At the Imperial Conference of 1918, it was agreed that Indians settled in various parts of the empire should be allowed to bring one wife and their minor children to their new homes. The Imperial Conference in 1921 passed a resolution (South Africa dissenting) recording that it was incongruous with the new position of India as a dominion in emergence (equal partner in the British Commonwealth) to impose any disability on Indians domi-

ciled in various parts of the empire. The Conference further urged that citizenship should be granted to such Indians. The position in South Africa worsened when the Nationalist Government came into power in 1924. It was frankly anti-Indian and sponsored several pieces of legislation aiming at segregation. The Cape Town Agreement of 1927 however provided a respite. It allowed such Indians as were willing and able to conform to Western standards of life to remain unhindered in South Africa. Those who could not do so were to be assisted to go back to India with government assistance but were free to return to South Africa within three years on payment of the allowances granted to them for their visit to India. The right to send for one wife and minor children from India was re-affirmed. The new proposals for segregation and imposition of colour bar were dropped for the time being. The Union Government requested that an Agent-General of the Government of India should be stationed in South Africa to look after the interests of the Indians domiciled there. The Agreement was to last for five years. The Nationalist government tried to enforce the scheme of assisted emigration with a view to reduce the number of Indians to the irreducible minimum. Though some 8,500 Indians left South Africa at a cost of some £200,000, the Cape Town Agreement did little to assuage the difficulties facing Indians. To provide for an easier method of making representations and safeguarding the existing rights of Indians, an Agent-General for India was appointed in South Africa in 1927. The Agreement fell due for renewal in 1932 when its principle was again confirmed by the representatives of the two governments. Nothing substantial was however achieved except the recognition of the right of the Government of India to act as the guardian of the interests of the Indians settled in South Africa and to do so through direct negotiations with the Union of South Africa.

The passage of the Government of India Act, 1919, was

followed in another sphere by the grant of the so-called fiscal autonomy to India. In 1878 free trade had been imposed on India in the interests of the the cotton industry in Britain. Lord Northbrook had resigned rather than agree to the sacrifice of much needed revenue. His successor Lord Lytton had carried out the orders of the Secretary of State for India only by overruling the majority of his Executive Council. The first breach in the wall of free trade came in 1917 when, in order to secure a gift of £199,000,000 for the prosecution of the First World War, the British Government allowed the Government of India to impose a 4% protective duty on British piece goods imported into India. The Joint Select Committee on the Government of India Bill recommended that 'the Secretary of State should, as far as possible, avoid interference in Indian tariff arrangements when the Government of India and its legislature are in agreement. In 1922 the matter was put to the test. Faced with a deficit, the Government of India raised duties on imports to 10% and the excise on cotton goods to 7½%. The Lancashire cotton industry bitterly resented the raising of protection to the new figure. The Secretary of State for India assured it that he could not think of imposing a tariff in India in British interests when India was faced with a serious deficit. A Fiscal Commission appointed early in 1921 reported in 1922 in favour of discriminating protection to such industries as could, with the help of protection, ultimately face world competition without such support. A Tariff Board was set up in 1932 to give effect to this policy.

Another sign of India's subordination to England that attracted attention at this time was the expenditure incurred by the Government of India on defence. The Governor-General in Council had put the Indian case to the Secretary of State in 1890 in these words. 'Millions of money have been spent in increasing the army of India or armaments and fortifications to maintain the supremacy of the British power in the East.

The scope of all these great and costly measures is an imperial policy. We claim, therefore, that a just and liberal view should be taken of the charges which should legitimately be made against Indian revenues."

This cry went unheeded for several years. The Welby Commission was then appointed to study the question. It submitted its report in 1900 suggesting that when Great Britain borrowed troops from India, she should pay all the expenses unless India had direct and substantial interest in the result. It was agreed that India had no such interest in Europe, Eastern Asia or Africa, west of the Cape. Service by Indian troops overseas was in all cases made subject to parliamentary approval. During the World War I, however, India contributed £12,000,000 to the general chest of the allied nations. This revived interest in the question of military expenditure. In 1933, a Tribunal was set up by the British Government to assess the defence expenditure legitimately to be borne by India. The tribunal decided that the Britsh Government should pay £1,500,000 a year. This offset the capitation charges of about £1,500,000 paid annually by the Government of India for the recruitment and training of the British personnel of the army in India.

The Montford Report had recommended a Chamber of Princes meeting under the Governor-General to deal with the agenda placed before it by the political department. On February 8, 1921, a royal proclamation was issued setting up the Chamber. It consisted of 108 princes exercising 'full or practically full internal powers' and 12 members representing 127 less fortunate rulers. The chamber met under the Viceroy and elected from among its members a chancellor and a pro-chancellor every year. A standing committee of seven members—two of them chancellor and the pro-chancellor—advised the Governor-General on questions referred to it. It could also propose for his consideration other questions affecting Indian

States generally. The chamber was a deliberative, consultative and advisory body. It brought the princes together reversing the earlier policy which had insisted on keeping them apart. It was not, however, intended that it should discuss the relations between the political department and any one State nor was any decision taken by the chamber to be a bar to any course of action a state might otherwise pursue.

The dawn of a new era in British India raised certain problems the solution of which partly raised the status of the states. As relations with the states formed an Indian subject, the provincial governments and their agents were relieved of their duties as local representatives of the political department. The Government of India now set up its own agents in various parts of the country to whom the task of representing the political department in their areas was entrusted. Thus the states came into direct contact with the Government of India through an agency specifically charged with the task of looking after the states. This was supposed to bring them nearer to the policy making organ and thus make it possible for them to make direct representations to the Governor-General.

The declaration of British policy to grant responsible government to India perturbed the princely order. Few Princes had anything so modern as a legislature. Only a very small number had their administration organized on modern lines. Most of them were content to live medieval lives and govern their subjects in the good old ways. The prospect of political democracy in British India frightened some of them. They started thinking of themselves as a special order ordained to be preserved against change for all time. They caught the contemporary infection for an inquiry into their status. The Butler Committee was set up to inquire into 'their present status and make recommendation about how best to preserve it.'

The Chamber of Princes now took up cudgels on behalf of the princely order. Learned counsels were briefed in order to pre-

sent their case. They now claimed that their relations with the political department should be closely defined. On their own behalf they claimed that they were in law bound by the original treaties only which the progenitors of their houses had made with the East India Company. By implication they repudiated the conventions and usages which their dealings with the political department for close on a century had established. On both these counts they were disappointed. The Butler Committee came to the conclusion that the relations between the states and the Crown were covered by the paramountcy of the Crown. Its demands could not be defined as to do so would amount to circumscribing it. It further declined to fly in the face of past history by limiting the relations between the states and the Crown to original treaties. It declared that the customs and usages of the political department had modified treaty rights and it was not possible to go back to the eighteenth century now. It accepted however the preposterous thesis that the states were in political relations not with the Government of India but with the Crown and recommended that in any future constitutional set up of the country, they should not be handed over to a successor Government of India without their consent. Not a single state had made its original treaty with the British Crown or its representatives in India. All the treaties had been made with the East India Company, a statutory body of English merchants authorised to carry on administration in India for some time. Parliament had not consulted them when it transferred the Government of India, including its relations with the states, to the Crown. What Parliament had done once, it could, in law, do again. It was one thing for the British Government to announce that it would discuss the Indian problem with the states as well as with British India. It was quite another matter to declare that the princes could be left hanging in the air or left dependent on the British Crown when the British authority had other-

wise disappeared from British India.

Though Lord Dalhousie had treated the Indian princes as a nuisance to be removed as early as possible, his successor had discovered during the Mutiny that the Indian states formed a sort of second line of defence for the British power in India. History repeated itself now. The Government of India had been dragooning the rulers of Indian states into creating some semblance of good government in their territories. It now assumed the new role of protectors of the rights of Indian princes which it had never hesitated to invade before. Soon it became a 'sacred trust' which the British were bound to protect at all costs.

These years saw one important addition to the civil liberty and another to the principle of equality of citizens in India. The Press in India had been free except during the Mutiny. Lord Lytton took the first measure against Indian journalists by imposing unpleasant restrictions on the 'vernacular press' in India. His successor Ripon repealed the measure. In the first decades of the twentieth century, the Government of India finally settled on the Indian Press Act, 1910 as its alleged weapon to fight terrorism and incitement to violence. The measure was so framed however, that 'every newspaper which expressed any view of which the local government disapproved became liable to fine and forfeiture'. Publishing newspapers was considered a dangerous profession ; the publisher of the paper as well as its printer had to deposit security varying from Rs. 500 to Rs. 2,000 as a token of his good behaviour. If in the opinion of the local government the paper offended against the all comprehensive provisions of the Press Act, he was penalized by an administrative order which confiscated the deposit for the first offence and confiscated the second higher deposit as well as the printing press for the second offence. An illusory right of appeal to the High Court was provided for, but the offence was so widely defined that not once did a High Court

find itself entitled to interfere. In 1922 the Press Act was repealed thus emancipating the journalists and printers from its irksome restrictions.

The criminal procedure as it stood in the beginning of the century allowed Europeans to claim trial by jury half the members of which were Europeans. This provision had often led to serious miscarriage of justice where Europeans were accused of offences against Indians. In 1922, Indians were levelled up to the status of the Europeans in this matter by providing that they could claim an Indian jury when accused of a crime against Englishmen.

CHAPTER XIX

THE DEMAND FOR FURTHER REFORMS

The declaration of British policy in India in 1917, defined responsible government as its goal. The Government of India Act, 1919 was the first measure in this direction. It was in the nature of an experiment. After ten years the British Government was to appoint a Commission to report on the next step. The Commission was to be guided by the co-operation offered and capacity for parliamentary government displayed by Indians in the previous decade. On its report Parliament was to decide again how far it was to proceed towards the goal thereafter.

But this time table was seriously upset from the very beginning. The Government of India Act was not a very comprehensive measure. It left many vital questions to be decided by rules and regulations made by the Governor-General or statutory orders issued by the Secretary of State. The franchise and representation were to be fixed by rules. The Governor-General in Council was to distribute governmental functions between the centre and the provinces and divide the provincial subjects between the Governor in Council and the Ministers. Many other questions which elsewhere form a part of the constitution were similarly left to be dealt with by rules and regulations. Almost as soon as the first Legislative Assembly met in Delhi, it began to be said that the entire possibilities of the Government of India Act for transfer of authority to Indians had not been exhausted. This led first to a departmental enquiry and later to the appointment of a committee of the legislature to go into the constitutional question. Its majority report recognized that some further advance under the Act was possible and made recommendations with a view to secure it. The Indian

National Congress had boycotted the first elections and called for non-co-operation with the government. The measures taken to suppress the movement demonstrated to many in India that Indians were far from being masters in their own house. Thus the agitation for a fresh constitutional settlement continued unabated. Conservative declarations in England throwing doubts on the wisdom of the British policy in India and still praising the Indian Civil Service—the British element thereof—as the steel frame of the Indian administration lent weight to the extremist doubts in India. An All Party Conference tried to evolve a new constitution for India but failed to secure agreement. Meanwhile the working of dyrachy in the provinces seemed to suggest that the reforming zeal of the British rulers in India was abating. The Governor-General in Council suggested to the Secretary of State that the Statutory Commission to enquire into the working of the Government of India Act be formed before the lapse of a decade. The British Government accepted the proposal and a Royal Commission under Sir John Simon was appointed with members drawn from all the three political parties in England. Its membership was confined to M. P.'s alone. This excluded Indians and was taken as a slur on their capacity to take part in such an investigation. If the Indians were on their trial and could not therefore be judges in their own case, so were the British and should have been similarly excluded. The subsequent steps the Government took in order to associate Indians with the enquiry in one capacity or another failed entirely to appease public opinion but were a sure proof of the fact that somebody had blundered in estimating Indian reaction to an all white Commission. Almost all political bodies boycotted the Commission, its advent in most places became a signal for unseemly public demonstrations put down by still more unseemly measures. A bitter tone crept into public controversy when the British Government in England and its representatives in India care-

fully avoided the use of Dominion Status as the goal of British policy in India. While the Statutory Commission was busy writing its report, Lord Irwin went to England and persuaded the British Government to allow him to proclaim Dominion Status as the goal of British policy in India. Simultaneously with this a Round Table Conference was announced in England between the representatives of British India, Indian states and the British politicians. The Indian National Congress demanded that the agenda of the conference be confined to measures necessary for setting up the frame work of a dominion constitution. The Government of India refused to prejudge the issue and the first session of the Round Table Conference was held in 1929 without Congress representatives.

While the Indian representative were on their way to London, Mr. M. R. Jayakar and Sir Tej Bahadur Sapru succeeded in persuading the Indian princes that their interests were identical with the interests of British India. The princes had been already disillusioned a little by the Report of the Butler Committee. Despite the legal talent they had employed at enormous fees, it was doubtful whether they could long plough their lonely furrow to some useful purpose. The British Government in India had kept such dynasties alive as had survived the doctrine of lapse. But beyond that the princes had little for which to thank the political department. They had as many, if not more, grouses against the British policy as British India. The princes gave their support to an Indian federation composed of the whole of India with parliamentary institutions. Thus the one great problem had been solved before the Indian delegates set foot in England. English Conservative opinion had been opposed to a responsible centre. The Simon Commission was busy just then proving why responsible government could not be introduced at the centre. But against combined Indian demand for an Indian Federation they were powerless. The British Prime Minister declared at the end of

the first session of the Round Table Conference that three principles of progress had been unanimously agreed to, provincial autonomy, Indian Federation with a responsible centre, and safeguards in the provinces as well as at the centre in the interests of England and India. Mahatma Gandhi attended the second session of the Round Table Conference but was arrested on setting foot on Indian soil. The final plenary session of the conference was held not before a large number of sub-committees had explored thoroughly various questions arising out of the main decisions of the conference. The conference signally failed to arrive at an agreed upon solution of the communal problem in India. Recent British pronouncements had made the question much more complex than it need have been by raising hopes in various quarters. Anglo Indians, Europeans and Indian Christians who were enjoying more than their share of loaves and fishes in India made common cause with Harijans, Sikhs and Muslims who claimed that they were not getting their dues. The failure of the Minority Committee left the matter where it was. Naturally the British Government had to take a decision in the matter. The Prime Minister announced his proposals about minorities a little later. This was often called an award but it was in reality a political decision given by one of the parties as the most expedient solution of the question. Harijans had been separately treated in this award but Mahatma Gandhi's fast in Yeravada jail brought about a solution of the question where their inclusion among the Hindus was secured at a price.

The proposals agreed to at the Round Table Conference were reduced to a bill called the Government of India Bill. This was introduced in both Houses of Parliament. Like its predecessor in 1919 it was entrusted to a joint committee of both Houses of Parliament for examination and report. The proceedings of the committee were remarkable in giving a picture as to how the various parties expected various provi-

sions of the bill to work. The most illuminating evidence was tendered by the Secretary of State for India supported by a galaxy of expert administrators. On the Committee's Report the bill was recommitted to Parliament and finally emerged as the Government of India Act, 1935.

The preparation of electoral rolls and the holding of elections for the provincial legislature took time but by April, 1, 1937 all these formalities were complete and provincial part of the Act was brought into operation. The introduction of the federal part of the Act was contingent on the adhesion of states entitled to 52 seats in the Federal Council representating one half of the total population of the states, on the formation of a Reserve Bank of India and the emergence of a Federal Railway Authority. A Reserve Bank was set up in 1938 and plans for a statutory Railway Authority were being made. But the princes now hung back. Separate Instruments of Accession had to be procured from every ruling prince. This proved to be a formidable task. The Chamber of Princes seemed to be apathetic if not antipathic. Individual princes were afraid of taking a decision against the joint wisdom of their order. A model Instrument of Accession prepared by the political department failed to make things easier. The Government of India then decided to depute a special representative of the political department to various states and bring round the princes to an adhesion to federation.

The doubts and misgivings of the princes were increased by the opposition to the proposed federal set up of British Indian politicians. Some of them had no enthusiasm for sharing power with the autocratic princes and their representatives.

When the war started in 1939, the Government of India decided to proceed no further with the scheme and the federation as visualized in the Government of India Act died an abortive death.

Some other sections of the Act were brought into operation on account of the introduction of provincial autonomy in the provinces. A Federal Court was set up to hear and determine constitutional cases. The members of the India Council gave way to Secretary of State's advisers. The rights of the Public Services came to be protected by the appropriate provisions of the Act.

The Government of India Act of 1935 remained in force for a decade. On August 15, 1947, it was amended by the Independence of India Act, 1947. It is this amended version that is the constitution of the country to-day.

CHAPTER XX

THE GOVERNMENT OF INDIA ACT, 1935

The Government of India Act, 1935 was enacted, it was declared, to set up a federal government in India. In order to secure this, subjects of administration were divided between the provinces and the central government in the Constitution Act itself. Provincial subjects were entrusted to eleven provincial governments in Assam, Bengal, Orissa, Bihar, the United Provinces, the Punjab, the North Western Frontier Province, Sind, Bombay, Madras, and the Central Provinces. The executive authority of a province was vested in a Governor appointed to represent the Crown in the province. The administration of the provincial affairs was to be ordinarily carried on by a Council of Ministers appointed by the Governor from among the elected members of the provincial legislature. The Governor presided over the meetings of the Council of Ministers. The ministers held office during his pleasure. The Governor was not to act as the constitutional head of the provincial government alone ; he was actively associated with the entire administration of the province by his special responsibilities. He was authorised to act in several matters in his discretion without consulting his ministers, in others he exercised his judgment after considering the advice tendered to him by his ministers.

The ministers carried on the administration of the province as a double responsibility ; they could be dismissed by the Governor and refused supplies or necessary legislation by the legislature.

The provincial legislatures in the United Provinces, Bengal, Madras, Bombay, Bihar and Assam had two chambers, the

Punjab, Orissa, the North Western Frontier Province, Sind, and the Central Provinces had only one. The popular chambers were called Legislative Assemblies and the second chambers in the six provinces Legislative Councils. All the members of the legislative assemblies were elected, but a minister if he was not a member of the legislature could address it. The Governor could summon the one or both Houses of the legislature together or separately and address them. The number of the members of the legislature was increased largely in all the provinces. Members were elected for territorial as well as by special functional constituencies. Territorial constituencies elected their representatives by separate communal electorates, each consisting of members of a particular religion, race or sex. The franchise was considerably lowered.

The legislatures elected their own presiding officer and made their own rules of business. The bills passed by them were subject to the Governor's assent. The annual financial statement was laid before the legislature. The popular house voted the demand for grants. The legislature now became a government making body. The ministers could secure necessary laws and money for their departments from the legislature alone.

But the Governor possessed considerable power including those of making his own laws, temporary Ordinances and permanent Regulations for excluded areas and Acts and of authorizing spending of money by public servants whenever, in his opinion, it was necessary to do so for the discharge of his special responsibilities.

Certain backward tracts were 'excluded'; their administration was primarily the Governor's special concern. He made Regulations for the peace and good government of these areas, and made provincial and federal legislation applicable to such areas with necessary modifications.

When the Governor was satisfied that the government of the province could not be carried on in accordance with the normal

provisions of the Act, he could take over the entire or partial government of the province in his own hands by a proclamation ordinarily for six months. This period could however be extended by a year at a time for a total period of three years by parliamentary authorization. A war amendment of the Act made it possible for the Governor to carry on emergency administration of a province till six months after the termination of the war.

Provincial sources of revenue were listed in the Constitution Act. The central government supplemented these resources by statutory grants to the North West Frontier Province, Sind and Orissa. A part of certain taxes collected by the centre was distributed by it to the provinces in a fixed proportion. The provincial governments were allowed to borrow on the security of their own revenues. The accounts of the provinces were kept and audited by the Accountant-General appointed by the central government. The audit report of the Accountant-General was considered by the statutory Public Accounts Committee of the provincial legislature and ultimately by the legislature.

The administration of justice in various provinces was under the High Courts or courts of equivalent status. The Act made it possible for an Indian Civilian to become the Chief Justice of a High Court and raised the age of retirement of judges to 62.

The Constitution Act more than safeguarded the interest of the public servants serving in the provinces. Their protection was the Governor's special responsibility, members of the All India services could seek ultimate redress against any adverse orders affecting them from the Secretary of State and his Advisers.

Public Service Commissions were set up in every province or group of provinces. They were responsible for the recruitment of all public servants for the provincial services.

The Act replaced the India Council by Secretary of State's Advisers. Their number was now fixed at between 3 to 6. Their only statutory duty was to decide questions affecting public services. The Secretary of State could seek their advice on any other question he liked. The Government of Great Britain assumed responsibility for paying for the upkeep of the India Office including salaries of the Secretary of State, his Advisers and his staff to the extent of £150,000 a year. The Government of India paid the rest of the cost on account of the agency duties performed by the Secretary of State on behalf of the Government of India. The Advisers were appointed for five years and were ineligible for reappointment. One half of the Advisers were to have held office for ten years under the Crown in India. Only such persons with this qualification were appointed who had not ceased to perform in India official duties under the Crown more than two years before their appointment. The Secretary of State retained his powers for the direction, superintendence and supervision of the Government of India. In provinces his authority was limited to the supervision and direction of the conduct of the Governor when he acted in his discretion or used his own judgment. The Governor's exercise of special responsibilities was also subject to directions from the Secretary of State. With his Advisers he heard and determined the appeals of the public servants serving in the provinces and approved the rules and regulations made for their recruitment, discipline and conduct. The emergency government of a province under Section 93 was subject to his directions.

The High Commissioner for India in England continued performing such duties as were entrusted to him by Indian governments, central and provincial.

A Federal Court was set up in 1937 as the highest court of appeal in India for the interpretation of the constitution.

The central government remained mainly organized as

under the Government of India Act, 1919. The political department was however taken over by the Crown Representative appointed by the crown to conduct its relations with the states. The relations of the central government with the provinces now came to be governed by the new Act. Thus the provincial government as conducted by the Council of Ministers ceased to be answerable to the Governor-General in Council. The Governor was subject to the immediate supervision in the discharge of his special responsibilities and for acts done in his own discretion or judgement to the Governor-General. The breakdown of the constitution in a province was proclaimed with his approval ; emergency government was responsible to him. He set up tribunals for the adjudication of rival claims of various provinces to the waters of Indian rivers. The Governor-General could take action when the peace and tranquillity of India or any part thereof was threatened. This gave him an interest in the preservation of law and order in all provinces and could provide him opportunities for direction wherever he thought the situation had become very grave.

Such were the provisions of the Government of India Act, 1935. How they worked in practice we shall discuss in the chapters that follow.

CHAPTER XXI

PROVINCIAL AUTONOMY IN INDIA

[1937 TO 1947]

The Government of India Act, 1935 created two supplementary, if not rival, authorities for the normal government of the province, the Council of Ministers responsible to the Legislature and the Governor discharging his special responsibilities. Their fields of action were not well marked. No subject of administration as such formed the special responsibility of the Governor, consequently no provincial subject was placed beyond the authority of the Council of Ministers. As such there was no dyarchy in the provinces. But the action of the Council of Ministers in any department became the concern of the Governor if, in his opinion, it tended to produce certain results. A grave menace to the peace or tranquillity of the province, an invasion of the legitimate interest of minorities, an inroad into the rights or legitimate interests of the public servants or their dependants, an attack on the dignity of the ruler of a state and discrimination against British subjects domiciled in the United Kingdom were the results the Governors were asked to prevent. The Governor alone was to judge when any such results were likely to be produced. 'The field of ministerial responsibility with respect to any particular matter is as wide or as narrow as the Governor might choose to make it.' It would have been much more difficult to make a success of this new type of dyarchy under which ministers were expected to accept without demur the censure implied in the Governor's excercising his special responsibilities and thereby declaring that their policy had subjected the province to such consequences. It would have made impossible any judgment by the electorate

on the conduct of their ministers when such conduct had earlier been judged and found wanting. It is possible to hold with Keith that safeguards which made this dyarchy possible were 'unmeaning provisions put into the constitution in the hope that they will be accepted by Indian opinion as not intended to be effective and by British opinion as securing all that is requisite.' It could on the other hand be said that it was hoped that in their hurry to grab power some Indian politicians would put aside such niceties and hasten to fill the seats of the mighty. This could have been possible if the elections in various provinces had resulted in sending to the legislature a motley crowd of members whose self interest was proof against any snubs.

But two other types of provincial governments were also attempted during this period. The Congress refusal to assume office in the six provinces, Bombay, Madras, the Central Provinces, the United Provinces, Assam and Bihar, where they commanded a comfortable majority among the legislators was followed by the appointment of ministers who had hardly any following in the legislature, who did not expect to command a majority and who were not ready to advise the Governors to dissolve the legislatures to seek a fresh verdict at the polls. An almost similar experiment was again made in Orissa, Assam and the Frontier Province in 1939 when the Congress Governments resigned. The slight difference between these two types of governments was that in the second experiment, the legislature was called at convenient times when the ministers could hope to, and did, secure majorities in the legislature whereas in 1937 no meetings of the legislature were called.

The third variety of provincial government was undiluted autocracy under the Governor without benefit of public opinion.

After the resignation of Congress ministries in Bombay, Bihar, Orissa, the United Provinces, Madras, the Frontier Province, and the Central Provinces in 1939, the Governors assumed entire responsibility for the administration of their provinces

and continued so governing them till 1946. In Orissa a minority ministry was formed in 1940. Assam also had a spell of 'Governor's autonomy' in 1942. In the North Western Frontier Province a minority ministry was installed in power for some time.

Neither of these forms of government could be called provincial autonomy. If anybody was autonomous here, it was the Governor. But the irony of fate lay in the fact that as soon as a Governor threw off the yoke of the Council of Ministers and the legislature, he came under the supervision of the Governor-General and the Secretary of State.

Inherent difficulties in working the provincial government in two undivided parts led, however, to its modification not by a statutory amendment but by a constitutional usage. The British Government could ill afford in 1937 to become the laughing stock of the world by introducing in the greater part of India autocractic government such as she had not seen since the beginning of the century. The interim ministers appointed in April could remain in office for six months for which financial provision had been made by the Governor's authority. Before these six months were over, a compromise formula was found whereby the Congress party was given the assurance that if it took office, the Governors would not function as centres of rival authority in the province. They undertook to act as constitutional heads of government in their provinces exercising the privilege of demanding the resignation of ministers or dismissing them if and when they found that their action called for the exercise of their special responsibilities. Alternatively the ministers were free to resign and did resign if they discovered that the Governor was not willing to accept their advice.

The Congress ministries assumed office in the six provinces in October 1937. A Congress led coalition ministry was soon set up in Assam in 1938. The defeat of the Muslim League-Ministry in the North Western Frontier Province installed a Congress ministry in office there in October 1937. The assu-

rance given to the Congress was equally applicable to other parties as well. From October 1937 to October 1939, the Governors acted as constitutional heads in all the provinces.

The Governor still presided over the meetings of the Council of Ministers. In the Congress provinces, these meetings were mostly formal ; the ministers usually met earlier under the Prime Minister and decided their line of action before they met the Governor. In the Punjab, Sind and Bengal, the Governor's chairmanship of the Council of Ministers was more than formal. The ministers gladly welcomed the advice of the Governor and used it as a convenient support. Thus in practice dyarchy disappeared from the field of provincial government even though there was no change in the law. The Governors usually left their ministers alone in the exercise of their duties and, where necessary and where possible, preferred to secure their ends by advising a course of action which the Council of Ministers could appropriate as its own. From outside, there was one demand for action under the special responsibilities of the Governor. When an agitation started in British India against the denial of elementary rights of religious worship in Hyderabad, the Nizam sought protection against the entry of British Indians in his territories. The Government of Bombay refused to interfere in the matter as it held that persons entering Hyderabad from Bombay were never guilty of any criminal activities in Hyderabad.

The Governors possessed several other statutory rights of taking action in their individual judgment. This implied that they obtained the advice of the Council of Ministers or the Prime Minister but were free to accept or reject that advice. Long before the Governors had been persuaded not to use their special responsibilities, they had followed the easy path in making the appointments of Advocates General, Members of Public Service Commission and the like on the recommendation of their Ministers.

But there was one duty the Governors had still to perform unaided, the selection of their ministers. The Instrument of Instructions to the Governors laid down that they should summon to their aid 'a member of the legislature who, alone or in coalition, was likely to command a stable majority in the legislature' and then in consultation with him form a Council of Ministers. In provinces where a single party alone commanded a stable majority under a recognized leader, the Governors were bound to summon such a leader for the task. But where coalition alone was possible, as in the Punjab, Assam, Sind and Bengal, the Governors were free to choose. They chose well till 1939. But when the Congress ministries resigned in eight provinces, some of the Governors could not resist the temptation of demonstrating that they could form ministries from among the minority parties in their provinces. In Orissa and Assam, the obliging 'care taker' chief ministers who had held office in the first six months of provincial autonomy, were again called to power though one of them commanded the support of 14 members only in a house of 60. They continued in office even though defeated in the legislature. The Governor of Sind dismissed his Chief Minister even when he had a stable majority at his back. The Chief Minister summoned to succeed him had such little hope of a stable majority that he changed his party label before entering on office. In Bengal in 1943 a Chief Minister still commanding a stable majority in the house was dismissed during the budget session while voting on grants was in progress. But when the vote for grants for a major department of administration was refused to another Chief Minister in 1945, the Governor kept the ministry in office and drove the speaker to the adjournment of the House to prevent such misuse of discretionary power making a mockery of the constitution. The Governor of the Punjab patiently waited till the Unionist Party had formed a coalition with other parties and then installed a coalition

ministry in office in 1946. But in Sind, the Governor preferred to call the leader of the single largest party to office in 1946 even when a coalition of other parties had been formed commanding a majority of votes in the Assembly.

The Council of Ministers held office during the pleasure of the Governor. The ministers were jointly responsible for all their actions and usually resigned together. But in Sind and Bengal, the Governors virtually dismissed the Chief Ministers without calling upon their colleagues to resign. As events proved, this unwarranted practice promoted intrigue among the ministers and M. L. A.'s without in any way helping the Governor. On the other hand, some of the ministers in the Central Provinces did not resign when the Chief Minister did. But probably the biggest 'howler' was the absence for more than six months of the Chief Minister of the Punjab from the country on private business without a head of the Government being appointed to take his place even temporarily.

The number of the ministers has varied from three in Orissa to eleven in Bengal. This again provided occasion for intrigue among the legislators particularly in the coalition provinces. It made government making easy for some Chief Ministers as they could keep all sections of their followers happy by including their representatives in the government.

Besides the Council of Ministers, the government of the province included junior ministers usually designated parliamentary secretaries. In the Punjab parliamentary private secretaries were also appointed. In most provinces, no definite work was assigned to these junior ministers. They were seldom treated as ministers under training providing the party with alternative ministers when vacancies occurred. They usually provided the party in power solid support in the legislature particularly valuable in the coalition ministries.

Parliamentary Government can be successfully carried on only when the principle of joint responsibility of the ministers is

respected. Unless all the ministers stand and fall together, disloyalty and intrigues make government impossible. This principle was usually respected except in Sind and Bengal. There lack of stable party majorities led to a state of perpetual squable among ministers and legislators. The situation was complicated in both the provinces by the fact that in Bengal the Europeans held the balance of power among contending groups whereas in Sind the Congress legislators did.

The Governors were appointed by the Crown on the advice of the Secretary of State and the Governor-General. In Orissa, the appointment of an acting Governor was cancelled when the Council of Ministers refused to tolerate the elevation of their Chief Secretary to that office. On appointment the Governors received an Instrument of Instructions previously approved by Parliament laying down how they were expected to perform their duties. The Instrument had statutory sanction and could not be changed without previous Parliamentary approval. The Governor-General and the Secretary of State could warn a Governor if he violated its provisions and in the last resort could even call for his resignations for such a violation. But citizens could not enforce it against the Governor through judicial action.

The provincial governments administered 'provincial' subjects exclusively and the 'concurrent' subjects jointly with the centre. Both lists included subjects usually administered by units of a federation elsewhere. Advantage was taken of the interpretation of the federal constitution in the British Dominions and the United States of America to prepare detailed lists of provincial and concurrent subjects leaving little room for future controversy. The financial resources of the province were enlarged by permitting them in their own right to raise certain taxes which they could have raised earlier with the permission of the central government. Here controversy raised its head to be settled in the Federal Court in favour of allow-

ing the provinces to raise taxes on sales and professions. As the levy of a professional tax could adversely affect the Income Tax levied by the centre, an amendment of the Constitution Act provided that the tax was not to exceed Rs. 250 a year on a payee.

The provincial governments could act as the agents of the central government when asked to do so by the latter. An amendment to the Constitution Act during the war provided for a more effective discharge of such functions by public services in the provinces.

To sum up, provincial autonomy with coalition ministries flourished for ten years in Sind, Bengal and the Punjab. In all the three provinces, the Governors formed the pivot of the administration as the provinces lacked well knit political parties. In Bengal the ministries were dependent on the support of Europeans who could be expected to act in consulation with the Governor. In Sind, the rival Muslim groups were hopelessly divided making the work of administration very difficult. In the Punjab the Unionist party had a majority but the party was soon split on an extra-provincial matter, the demand for Pakistan and the formation of a Muslim League Ministry in the province.

Bombay, Madras, the United Provinces, Bihar, the Central Provinces and the North Western Province had only a short spell of provincial autonomy between October 1937 and 1939. They were governed thereafter by the Governors till 1946. New elections were held early in 1946 and thereupon responsible government was restored in these provinces under majority parties. In Assam and Orissa there were short spells of Governor's rule alternating with the government of a ministry never able to command the votes of a majority but carrying on government as best as it could because many members of the majority party were in jail.

CHAPTER XXII

PROVINCIAL LEGISLATURES SINCE 1937

The essence of representative government is a legislature elected on a liberal franchise. The Government of India Act, 1935 set up entirely elected popular legislatures in the eleven provinces and predominantly elected second houses in Bengal, Assam, Madras, Bombay, U. P. and Bihar. The number of seats in the various legislative assemblies varied, 50 in the North Western Frontier Province, 60 each in Orissa and Sind, 112 in the Central Provinces, 192 in Bihar, 175 in the Punjab and Bombay, 215 in Madras, 228 in the United Provinces and 250 in Bengal. Seats continue to be divided as before between communities and trades and professions. To the communities already entitled to representation were now added the scheduled castes and backward tracts. A further wedge was driven into communities by granting separate representation to women in most provinces. Europeans in Bengal were allotted 25 seats (out of a total of 250) for a population amounting 3½ per cent of the total whereas the Hindus were given 81 seats though forming 44 per cent of the population. Candidates in territorial constituencies fought elections usually on a party ticket, though some of the parties had no political platform. In some provinces a considerable number of candidates described themselves as independents presumably implying that they were not willing to subscribe to any of the exisiting political platforms. The number of parties able to secure representation in the provincial legislature rose to 14 in Bengal in 1937.

Only two elections were fought during the ten years that the Act was in force. In a federation provincial political parties seldom flourish. Usually national parties reproduce them-

selves in the units with local platforms of their own. This was largely true in India except that the local voters in the provinces voted on opposition to or support of the Government of India Act in 1937 and on Pakistan and Akhand Hindustan in 1946. The question of national independence overshadowed local government. When in office all the political parties subscribed to a programme which can best be described as one of social amelioration.

As before, constituencies stood divided into two classes, general and special. General seats were distributed between rural and urban constituencies among various communities. No attempt was made in the rules to apportion seats either to the number of voters or to the population. Thus in 1937 a general seat in Madras represented from 1926 (Europeans) to 73,811 (non-Muslim) electors. Seats allotted to various professions varied similarly from 1,018 (for labour) to 19 (European commerce). Even in the same community a member would represent between 6,004 to 73,811 voters if a Hindu, from 24,711 to 5,293 if a Muslim and from 41,968 to 8,321 if an Indian Christian. This was true of every other province. If the special constituencies be included, the range in various provinces is represented by the following table

Electors	Maximum No. for a seat	Minimum No.
Bombay	1,16,886	58
Bengal	98,316	18
Madras	73,811	19
Orissa	27,766	35
Bihar	57,619	25
Sind	28,419	1,629
Punjab	31,108	10
U. P.	79,010	52
C. P.	38,740	129
N. W. F. P.	12,806	366

Registration of voters for the first assemblies was made by the old dyarchical government, that for the election of 1946 by the Governors in the six provinces and the Council of Ministers in the rest. The wide variation in the number of registered voters for the two elections was significant and suggestive.

Men and women 21 years of age are entitled to be registered as voters for very low literary, property, income or combatant (in the World War I) qualifications. Forty per cent of adult males possess the vote.

The holding of elections followed the previous practice. In the elections held in 1946, a good deal of interference by the government was alleged in Bengal, the Punjab, Sind and the North Western Frontier. The polling and presiding officers were all officials, some of them amenable to the suggestions of the party bosses to return their party candidate at any cost.

Members of the legislatures get daily allowances or monthly salaries fixed by Acts passed by the provincial legislatures. These provide generously for their needs. Members continuously absent for 60 days without leave of the house can be removed and their seats declared vacant. Three members were so removed recently (October 1948) from the Bombay Legislative Assembly.

The first assemblies were elected for a period of five years. A war time amendment of the Constitution Act enabled the Governors to extend their life till six months after the termination of the War. As mentioned earlier, the first assemblies in Bombay, Bihar, U. P., C.P. and Madras did not meet after the resignation of the Congress ministers in 1939. The Assemblies elected in 1946 would remain in office probably till 1950 when the new constitution is expected to come into operation.

The legislature now meets under rules of its own. It elects a speaker in its first meeting after the oath of office has been taken by members. A Deputy Speaker may be elected at the same time or on a subsequent date. The Speaker gets a substantial salary and is always in office. The Deputy Speaker

assumes office only when the speaker has vacated his office but he presides in the assembly in the speaker's absence. The Speaker assumes office immediately on election. Till a Speaker is elected, the Assembly meets under a temporary chairman appointed by the Governor to administer the oath of office to members and to allow the election of the Speaker to be held. The Speaker can be removed from office by a motion of want of confidence in him carried by an absolute majority of all the members of the legislature. Such a motion requires a fortnight's notice. Motions of no confidence were moved or given notice of against speakers in the United Province, the Punjab and Bengal but were never carried.

In the beginning of a session, the Speaker announces a panel of chairmen who preside in the absence of the Speaker and the Deputy Speaker from the house. Every Assembly has a secretary who assists the Speaker in the discharge of his constitutional duties and a Sergeant-at-Arms who helps him in preserving order in the house.

Members of the legislature table questions addressed to the ministers in whose department the matter arising out of a question falls. The answers may be given by any member of the government. Usually a question requires a fortnight's notice but short notice questions can be asked with the consent of the minister concerned. Resolutions are moved voicing the opinion of the house involving neither legislation nor grants. Resolutions are no longer recommendations to the executive as they used to be till 1937, but reflect the 'determination' of the sovereign legislatures. Questions of urgent public importance are discussed, as before, by motions for adjournment. A plethora of these motions in some Assemblies under dyarchy led to some restrictions. The quorum for the transactions of business in the legislature is one sixth of the total membership. Thus whereas thirty members could discuss and decide all questions in the house, the rules of the Punjab Legislative

Assembly required that no motion for adjournment would be admitted for discussion unless 35 members supported it. Motions of lack of confidence in one or more ministers and in the entire ministry can also be moved. In some provinces ministers were allowed time for canvassing support for themselves in connection with both types of these motions by the practice which permitted discussion on these motions to be held not immediately but after several days. The Government is allowed to make statements on public policy including circumstances leading to the resignation of a minister or his dismissal. The English practice of allowing a minister resigning office to state his reasons for doing so on the floor of the house is followed in most of the provinces. In the Punjab, however, the government refused to allow such a statement to be made on the preposterous plea that the minister had been dismissed by the Governor acting in his discretion. The validity of this plea was rebutted by the Prime Minister a little later when he made a statement on behalf of the government on the question. In Bengal such a statement made in the house was suppressed.

The legislature discusses the expenditure in the estimates which is charged on the revenues of the province by the Constitution Act or by Acts of provincial legislatures. The rest of the annual estimates is voted as demands for grants. Excess grants are voted to cover any excess over authorized expenditure and supplementary grants are made to meet the cost of new items not foreseen at the time the original estimates were submitted. The annual estimates are discussed by the Assembly on dates set apart for the purpose by the government. The budget is announced to the Assembly by the Finance Minister on a day exclusively set for the purpose. There is some general discussion on the days following. Then begins the voting on grants. Members give notice of motions for cuts in the expenditure. The purpose of every cut is explained by

its sponsors. Provincial autonomy introduced a change here in that in several provinces the Speakers held that, as in England, only members of the opposition are allowed to move the cuts. In the Punjab, the government members were also allowed to move cuts thus defeating the main purpose for which the estimates are submitted to the house. Discussion on votes for grants ranges over the entire field of administration covered by the vote, that on the cut motion covers only the purpose for which the cut is moved. The discussion on the budget is political rather than financial. It provides opportunities for discussing the policy of the government rather than allow the legislators to scrutinize the financial justification or otherwise of the expenditure to be incurred. Provincial legislatures in India are not as much overworked as Parliament in England. It would be possible to allow a more thorough discussion on the budget by alloting more time for it. As it is only selected subjects are discussed and agreed upon motions for cuts debated. On the last day all the remaining votes for grants are moved one after another and agreed to.

The rules of business usually allot one day a week in the session for non-official business. The Government, by a resolution of the House, can use it for its own official business. In some provinces this has been too often done without trying to find time for Government business otherwise. The first hour of the sitting is used for answering starred questions. By consent of the opposition, it is sometimes, though rarely, dispensed with. The motions for adjournment have been very plentiful in most legislatures due, partly, to the refusal of the Government to supply information to members and partly to the member's desire to appear very active.

The rules of business provide convenient hours for the transaction of the business of the House. Most Legislatures provide for afternoon sittings, thus enabling the Government members to attend to their daily administrative duties. In the

Punjab the sittings were usually held from 10 A. M to 4 P. M. despite the fact that the rules of business prescribed that the legislature would usually sit at 2 P.M.

The procedure on bills in the provincial legislature is now the same as described in Chapter XVII. A bill passed by the Legislature is sent to the Governor. If he assents, it becomes an Act. He may refuse his assent outright, reserve it for the consideration of the Governor-General ; or send the bill back with a message that it be modified in certain particulars. If it is sent back to the legislature, it would again be reconsidered there. If a bill is sent to the Governor-General he may assent thereto or refuse his assent. Till August 15, 1947 he could have reserved it for the consideration of the Crown. The Governor-General can send back a bill to the provincial Legislature for reconsideration. When a bill was reserved for the consideration of the Crown, it lapsed unless it was assented to within twelve months of its presentation to the Governor. The Crown possessed, till August, 1947, the right of disallowing a measure within twelve months of its having been assented to by the Governor.

The rules of business provide that no member can speak twice on the same motion. He can interrupt the proceedings to offer a personal explanation, to raise a point of order, or to raise a question concerning the privileges of the House. The mover of a motion has the right to reply unless the closure is moved earlier. The motion for bringing discussion at a certain state to an end takes the form that 'the question be now put.' It is voted upon without discussion, but the speaker can refuse to put a motion for closure before the House if he thinks it is frivolous or an abuse of the procedure of the House. He thus tries to secure a fair discussion.

Every week the leader of the House outlines the Government programme for the week and usually indicates if the

Government intends encroaching on the time set apart for non-official business.

The Speaker puts the question to the House. After reading out the motion before the Assembly, he calls for votes. The members supporting the motion shout 'Aye', those opposing it 'No'. The Speaker decides which side is the heavier and declares whether ayes or noes have it. If his decision is challenged, he calls for votes again and then orders a division. The ayes and noes go into their respective lobbies, the tellers count them as they march back to their seats and report the decision to the Speaker, who announces the result. On a division being called, the votes of the members on both sides are recorded and published.

The Governor summons the Legislature to meet in a session, whereafter it is the Speaker who regulates the business. The session is terminated by the Governor who may, then or later, on fix a date for the next session. The Governor can issue Ordinances when the house is not in session. These remain in force only for six months unless approved by the legislature within six weeks of its first meeting after the promulgation of the Ordinance.

Till August 15, 1947, the Governor could issue Acts of his own or Ordinances covering his special responsibilities. He could also authorise expenditure for any purpose covered by his Special Responsibilities. These powers were never used. Ordinances on the advice of ministers and subject, ultimately, to the approval of the house have been issued before and after 1947.

The Speaker allots seats to various parties. The chief spokesmen of the government occupy the front bench. The leader of the biggest party in opposition becomes the Leader of the Opposition and sits on the front opposition bench with his colleagues. Other parties are allotted blocks of seats where they marshal their members. Unlike Westminster, in Indian

legislatures there is room enough for all M.L.A.'s and hence no seats are reserved.

The legislatures possess the power of defining the privileges of the House by an Act. The Constitution Act, however, declared that till the Legislatures so defined them the members would exercise the privileges enjoyed by the members of the previous provincial legislatures. Thus the members now enjoy freedom from arrest for civil cases during the session. In Bengal it is necessary to send intimation of their arrest to the speaker if the House is in session. In some provinces a ridiculous position was created by the Government's refusing to allow some members of the House to enter the chamber though they were permitted to use the library and watch proceedings from the visitors' gallery.

The members also enjoy freedom of speech in the House. Speeches delivered in the House can be published with impunity in the official proceedings of the legislature. Provincial Governments are not likely to take action against a newspaper to-day for publishing a speech of a member of the legislature. In the Punjab, when the District Magistrate of Lahore prohibited the publication of all reports of a public procession, the Premier declared that this prevented the newspapers from publishing the report of the speech of any M. L. A. referring to the incident.

Visitors are admitted on the recommendation of a member. Ordinarily a member can get admission tickets for two visitors.

The proceedings are conducted under the Rules of Business and Standing Orders of the House. These are interpreted by the Speaker and usually provide for the efficient discharge of the functions of the legislature affording reasonable opportunities to the opposition for public criticism of the administration. The rules, as well as the rulings of the Speaker, have very often upheld the dignity of the Indian legislatures. Some-

times, however, passions have been roused and the conduct of the presiding officers has appeared to those in the opposition ill judged and tending to favour one party or the other. Proceedings have also sometimes been marred by unseemly conduct making maintenance of order a difficult task. Members have then been expelled from the House by the order of the Speaker. The failure of a Speaker to keep a member in order led to the subsequent expurgation of offending remarks. The refusal of the member named to leave the House raised a problem in one legislature which threatened to assume serious proportions.

The proceedings are officially published under the authority of the Speaker by the local Government presses. The reports of the speeches are taken by a corps of short-hand writers. The typed speeches of the members are sent to them for approval as a fair record of what they said.

The setting up of the Legislative Councils in some provinces through a very restricted franchise has not served the purpose it was intended to serve. The strength of the Legislative Councils could not have been anything like that of the Assemblies if the franchise was to be limited and nominations resorted to. The result has been that even where the Legislative Councils differ in their complexion from the Assemblies, the very large majorities of the popular parties in the Assemblies make it certain that the attempt of the Council to obstruct the administration would bear no fruit. In the joint session of the two Houses called for resolving their differences, the majorities of the administration in the lower House made the verdicts of the joint session a foregone conclusion. Both Houses have equal powers except that money Bills originate in the Legislative Assemblies which alone grant supplies.

The Legislative Councils are permanent bodies. One-third of their members are renewed every third year. During the War partial renewal of the Council stopped. The renewals due

in 1949 may not take place in view of the fact that the new constitution may come into operation soon thereafter.

The partition of India in August 1947 led to the separation of the whole of Sind and the North-Western Frontier Province and parts of Bengal and the Punjab. There are now nine provinces in India with as many legislatures. East Punjab continues to have 175 members though there are no Muslims among the legislators. The number of the members of West Bengal has been reduced by the exclusion of the members representing East Bengal.

CHAPTER XXIII

CENTRAL GOVERNMENT FROM 1921 to 1946

We described the organisation of the central government under the Government of India Act, 1919 in a previous chapter. The central government was carried on under this Act from April 1921, till the attainment of independent status by India in August 1947. During this period it underwent many changes. For the first sixteen years, the Government of India consisted of eight members, three of them Indians. The Government of India then took its orders frankly and openly from the Secretary of State in Council. Its foreign department carried out the decisions of the British Cabinet or worked as its agent in the Middle East, Persia and Afghanistan, Tibet and China. The military department received its inspiration from the War Office or the Imperial Defence Council and was charged not only with the defence of India but with the defence of British imperial interests centring on India as well. The Secretary of State arranged for the services of the British officers serving with the Army in India and secured the British troops stationed for garrison duty in India. Exchange and currency were managed by the Secretary of State in England usually in the interests of the City. Most of its military equipment and stores were bought by the Secretary of State in England. The Secretary of State in Council was responsible to Parliament for every pie spent by the central government in India. This did not mean that the Governor-General in Council asked for and received sanction for all its expenditure every year. But all items of expenditure forming the annual Indian estimates had received the sanction of the Secretary of State in Council at one time or another. Relations with the Indian States were

closely supervised by the Secretary of State though he could trust the Governor-General as the member in charge of the department not to let him down in his dealings with the states. Members of the imperial services were recruited by the Secretary of State himself largely in England. He laid down the conditions of service and decided with the help of the India Council all appeals against Indian orders. The fiscal convention circumscribed his powers in the matter of custom duties. But he could always interfere to safeguard imperial interests or enforce cabinet policy. The appointment of a High Commissioner for India in England had transferred to him the powers to purchase civilian stores including railway equipment and made it possible for the Government of India to make its purchases abroad in the most favourable market. Railway policy in India was an imperial concern as it touched British investments in India. The Government of India Act, 1919, had definitely declared that Indians were to enjoy no authority at the centre but only such influence as might come from their larger number in the legislature. The government could get whatever laws it wanted either by Ordinances or by certification. About 80 per cent. of the money spent by the central government was not votable. The cuts in the rest could be restored by the Governor-General if he thought that his original estimates were needed in full in the interests of British India.

The increase in the number of the Indian members of the Executive Council from one to three did not imply any strengthening of Indian hand in the administration. Usually subsidiary departments were placed in their charge, law, education, commerce and industry. They could always be outvoted by the five British members of the Council. The policy of selecting one of the three Indian members from the services sometimes secured a pliant instrument not always favourable towards rising national aspirations. One of the three Indian members was always a Muslim who could be trusted to back

the Raj against revolutionary onslaughts. The Indian members seldom agreed among themselves on major issues.

The federal provisions of the Government of India Act, 1935 never came into operation. They, however, form a good definition of British policy in India when the Act was passed. The Government of India was to be dyarchical. Relations with the states were placed in the hands of the Crown Representative. Defence and foreign relations were reserved to the Governor-General. Exchange and currency were to be managed by a Reserve Bank free from political control. A Federal Railway Authority was to run the Indian Railways. Thus departments representing about 80 per cent of Indian expenditure were not to be under the Council of Ministers. But the limitation imposed on Indian authorities went still further, England's share in Indian trade, commerce and industry lay beyond the reach of Indian Ministers. The Governor-General was responsible for India's solvency and on the advice of a British Financial Advisor could turn down any scheme which the latter considered harmful to India's credit. It was little that the federal Council of Ministers was expected to do.

Even more surprising was the provision in the Act that this organization of the federal government would not be revised unless all the 562 rulers, princes, chiefs and what nots agreed to its amendment. A veto was thus placed in the hands of the princely order.

The organization of the federal legislature offended against all conventions that had made federalism workable elsewhere. The members of the Federal Assembly were not to be elected directly and one third of them were to represent not the people of the states but their princes. In the federal Council of States, the princes and princelings were to be represented by 104 seats as against 156 seats for British India. They were promised seats in the federal Council of Ministers. Even then

a representative of the British Crown was to regulate their relations with the Government of India. No assurances were asked for that the princes would sooner or later modernise their governments and give their people their due share in the government of the country.

The fact that there was no substantial transfer of power to Indian hands at the centre was mainly responsible for Indian rejection of the federal provisions of the Act. So many outside parties, British Commercial interests, British industrialists and princes among others, were involved in the British scheme that no assurances could have transformed the government set up under the Act into a quasi-Dominion, much less a dominion government in practice. Of course, even as a federation it was defective. Five hundred and seventy three units were obviously too many, the huge areas governed directly by the central government all over India represented an unprecedented problem in administration. The veto on vital constitutional changes exercisable by every member of the princely order was an unheard of innovation. The absence of common citizenship and the reservation of the defence of the states as a British duty in the hands of the Crown Representative would have made a mockery of federal government.

When the war broke out in 1939, India was still a subordinate department of the British Government. Its position with regard to war would have been the same even if the federation as visualized in the Act had been formed. The British declaration of war on Germany would have covered India then as it actually did in 1939. The prosecution of the war would have been even then, as it remained in fact, in the hands of the British Government acting through the Governor-General in India.

The War produced a good deal of talk but showed little change in the constitution or the working of the Government of

India. When it began, the Government of India was performing four types of functions, local, federal, co-ordinating and advisory. In the areas directly under the central government all the functions of local government, transferred to provincial administrations elsewhere, were being carried on by its agents. Its War, Foreign Affairs, Political, Finance (including customs, exchange and currency) and Communications (including railways, posts and telegraphs) departments looked after purely federal subjects. The Legislative and Assembly departments fulfilled a purpose common to all governments. The Commerce (including labour), the Home and the Education, Lands and Health departments performed concurrent, co-ordinating and advisory functions. In July 1941, the Governor-General carried out the first expansion of the Council during the war inviting five more Indians to the Council. These members were given charge of departments created by the bifurcation of existing departments. The Education Department yielded the interests of Indians in other parts of the empire to a new Indians Overseas Department. The directorates of information and broadcasting, till then a part of the Home Department, were detached therefrom to form another new department of Information and Broadcasting. The Labour Department took over labour welfare from the Commerce department. A separate Supply Department was set up to look after essential supplies during the war. The Civil Defence Department took over A. R. P. In 1942 another expansion of the Executive Council took place, this time adding three more members to the Council. New members took charge of the Food and Defence departments taking over food supply from the Commerce Department and cantonment and amenities for troops in various theatres of the war from the war department. A member without portfolio was sent to England to represent India in the Imperial War Cabinet. A little later came the department of Post War Planning.

Though the number of Indians in the Executive Council was raised from 3 to 11, the British members continued throughout the War in charge of the four vital departments of the government ; External Affairs, War, Home, Finance, and Railways. The work that three Indian members had been doing was now entrusted to five members. Two new departments brought into being by the War were entrusted to two members, whereas Home, Communication and War departments yielded some parts of their work to form the Information, Posts and Air and Defence and Civil Defence departments. All this cheeseparing did not change the essential character of the Government of India ; it continued to function as a subordinate department of the British Government. The eleven Indian members were carefully chosen to represent almost all the pressure groups in the country out to bargain with the British Government for weightage, special rights and the like. One or two erstwhile Congressmen found themselves in the seats of the mighty but they had long before repudiated their affiliations with that body. It is significant that not one of the Indian members except Dr. Ambedkar had any backing in the country. He frankly represented a pressure group out to bargain to its best advantage with the party in power.

The Second World War caught the British napping in India as elsewhere. The Conservative Government had in 1935 stoutly opposed—and opposed successfully—the insertion of a preamble in the Government of India Act, 1935 declaring Dominion Status as the ultimate goal of British policy in India. The preamble of the Government of India Act, 1919 reproducing the declaration of British policy in India made in August, 1947 was not repealed. Lord Irwin had declared in 1929 that 'the natural issue of Indian constitutional progress as there contemplated was the attainment of Dominion Status'. The deliberate omission of the term now was naturally resented

in India by all parties and left the impression that the Conservative Government probably agreed with Mr. Churchill who had declared in 1931 that he did not foresee any reasonable time within which India could have the same constitutional freedom as Canada.

CHAPTER XXIV

PARTITION AND INDEPENDENCE

The safeguards in the interests of India provided in the Government of India Act, 1935 made the preservation of law and order in India a British obligation. The British Government also assumed special responsibility for the preservation of the princely order and the rights and legitimate interests of the minorities. In the interests of Great Britain, the British Government undertook to secure that Indian trade and commerce were not fostered, in the only way they could be fostered by assigning to the European British subjects of the Crown a position in trade, industry and professions in India inferior to that of Indians. The steelframe of the Indian administration, the British elements in the two security services, Indian Civil Service and the Indian Police Service, was to be preserved without much serious damage and the Army in India was to continue being commanded entirely and officered mainly by Britishers far as long as one could foresee.

No wonder this evoked no enthusiasm in India. But the British Government stood to its guns. The Government of India was still being carried on under the Government of India Act, 1919 when the war broke out. The successful prosecution of the war in British interests demanded a contented India which could spare troops for fighting in all theatres of war. So what had been denied in 1935 was at last conceded in January, 1940 by a declaration of the Viceroy that Dominion Status of 'the Westminster variety as soon as possible after the war' was the goal of British policy in India. This evoked no response in any quarters in India where interest was centred round what the British did immediately. So slow was the

British Government's response to problems of the moment that a National Defence Council in India promised on the outbreak of the war was constituted two years thereafter in October 1941. In August, 1940 a statement repeated that subject to the due fulfilment of obligations which Great Britain's long connection with India had imposed and for which His Majesty's Government could not divest themselves of responsibility', Indian could have anything—even the noon—after the War. When Japan entered the war Sir Stafford Cripps came to India determined 'to sign away the title deeds of the old raj' and make 'a complete break with the past'. He declared that after the War India would be free to devise her own constitution. But 'the primary object of the Cripps Mission was, a matter of the moment,' the formation of a 'National Government' in India entrusted with 'the task of organizing all the resources of India', leaving 'the control and direction of the defence of India' in the hands of the British Government. 'Independence now' with the direction and control of war in the hands of the commander-in-chief representing the British Government seemed to be within India's grasp by a concession 'just short of complete change'. But Sir Stafford Cripps backed out at the last moment refusing to concede an Indian Government responsible to an Indian legislature for everything except defence.

But Cripps Declaration did sign away the title deeds of the old raj by its definition of ultimate British aims in India. All alleged British obligations in India were surrendered, though they were to be subject of a treaty between the Constituent Assembly of India and the Government of Great Britain. Further the veto on constitutional advance granted to the Muslims in India so far was lifted by visualizing the creation of one or more Dominions in India. Partition of India into a Hindu dominated area and a Muslim dominated area was conceded. Both formed revolutionary changes in British policy in India. The doctrine of a British trust in India was given up

never to be revived again. Partition showed a way which though unpalatable at the time, was ultimately adopted.

There the matters stood when the war with Germany came to an end in May, 1945. Japan was still however in the field. The Labour left the Coalition Government. The Conservative Government under Mr. Churchill now found a suitable opportunity to extend amnesty to the authors of what had been termed an 'Indian Rebellion of 1942.' The Congress leaders were released. At Simla, the Viceroy invited the leaders of the Muslim League and the Congress to come to terms on a national government of India. The Muslim League was now wedded to Pakistan, the Congress had all along opposed partition. The Simla Conference naturally displayed the incompability between these two approaches to the constitutional problem in India

When the Labour came to power in England, a Cabinet Mission came to India to explore on the spot the possibility of an immediate settlement of the Indian problem. The War was now over. The British Government stood committed to the emergence of independent India after the War by the Cripps Declaration. The Mission came to India 'with the intention of using their utmost endeavours to help her to attain her freedom as speedily as possible' within or without the British Commonwealth. After interminable discussions the Mission suggested a Union Government of India responsible for the defence, foreign affairs and communications with necessary powers to raise the finances required for the purpose. All other subjects and the residuary powers were to vest in the provinces. The states were to cede powers for the four central subjects to the Union and keep all the rest or as many of them as they pleased. The provinces could form groups with separate group executives and legislatures administering such subjects as they agreed to. The constitution was subject to revision ten years after its promulgation and every

ten years thereafter. The constitution of the Union, the groups and the provinces was to be formulated by a Constituent Assembly. Elections for the provincial legislative assemblies were to be held immediately. The new legislatures were to serve as electoral colleges for the election of the members of the Constituent Assembly. Members were to be elected by the method of proportional representation with a single transferrable vote. A total of 292 members for British India was to be reached by adding to the members elected by the provincial legislatures four members, one representing British Baluchistan, another for Coorg (elected by the local legislative council) and two elected as central M. L. A.s for Ajmer and Delhi.

The Constituent Assembly thus elected was to meet in a plenary session to elect its chairman and other officers, settle procedure and set up an Advisory Committee on rights of citizens, minorities and tribal and excluded areas. After doing this the representatives of Bengal and Assam were to meet in one section, those of Punjab, North Western Frontier Province, Sind and Baluchistan in another and the rest in the third section. Each section was to frame the constitution of the provinces included in it, decide whether the provinces were to have a group government and if so for what subjects. If a province decided not to join the group government, it could remain outside notwithstanding the fact that other provinces in the section decided to have a group government of their own.

At the first plenary session, the States were to be represented by a negotiating committee. But in the second plenary conference held after the provincial constitution had been formed, they were to be represented by 93 members calculated as one member to a million of population. The method of selection of the members was to be determined by consultation, presumably between the negotiating committee and the rest of the Assembly or its appropriate committee. These 385 members

were then to meet together to devise a constitution for the Union. Here matters concerning the grouping of provinces, the division of function between the Union and the provinces or raising any major communal issue were to be decided by an absolute majority of the whole house as well as of the two major communities.

An interim government with popular support was to be set up to be in charge of all the departments of government. It was to carry on administration till the Constituent Assembly made other arrangements for the purpose.

The Congress, the Muslim League and the Sikhs accepted the policy announced by the Cabinet Mission with mental reservations as subsequent events proved. The European members of the provincial assemblies decided ultimately not to vote for the election of members of the Constituent Assembly.

As the Congress and the Muslim League did not agree on the composition and the character of the interim government, a 'care taker' government of officials only was formed. After a good deal of negotiation an interim government of 14 members was formed, 5 representing the Congress, 5 the Muslim League and one each representing the Sikhs, the Parsis, the Anglo Indians and Indian Christians.

The establishment of an interim Government in September 1946 affected the powers of the Government of India in several ways. A British High Commissioner in India took over from the Governor-General the duty of protecting British interests in India. For the first time the Government of India chalked out a foreign policy of its own sometimes in sharp opposition to that of Britain. Its representatives secured the condemnation of the policy of the Union of South Africa in the United Nations Organization when the Union was being supported by Britain. This necessitated the appointment of Indian ambassadors in various countries of the world and of High Commissioners in the Dominions. The Vice-President of the Coun-

cil emerged as the head of the Government of India putting the Governor-General in the shade. The rules of business were changed, thus putting an end to the weekly interviews of the departmental secretaries with the Viceroy. The interim Government met formally under the chairmanship of the Governor-General but he left the members to decide various questions among themselves.

The interim government proved an ill assorted pair. The differences between the Muslim League members and the rest of the government reached a boiling point when the Muslim League Finance Minister introduced a budget without consulting his colleagues.

Meanwhile elections to the provincial Assemblies and the Central Assembly were held early in 1946. The Congress secured a majority of seats in the United Province, Bihar, Orissa, Assam, Madras, Central Provinces, Bombay and the North Western Frontier Province and an overwhelming majority of general seats in the rest of India. The leaders of the majority parties in the various Assemblies were now called to power and the Congress ministries were set up in eight provinces. In the Punjab the Congress formed the biggest single group in the legislature. After a good deal of negotiation a Unionist, Akali and Congress coalition was formed which took over the government. In Sind, the Muslim League had the largest following but a coalition of 'all the rest' claimed a majority of members. The Governor, however, called the Muslim League to power. Bengal had a Muslim League majority and formed a League ministry. Thus in two out of eleven provinces Muslim League ruled.

There was a good deal of quibbling over the Cabinet Mission's scheme among the political parties. When the elections to the Constituent Assembly were held the Congress very wisely nominated 'all the talents' in the country from all parties and belonging to all the communities as its candidates.

They were elected. The Muslim League succeeded in securing almost all the Muslim seats in the Constituent Assembly.

When the Constituent Assembly met, the Muslim League members from Assam, Bengal, Punjab, Sind and North Western Frontier Province absented themselves. After the election of the chairman and the adoption of a resolution on the objective of the Assembly, it adjourned to give time to Muslim League members to join if they cared to do so. They did not, and the Constituent Assembly thereupon refused to wait any longer for them. Independent members from the United Provinces, Bihar, Orissa, Assam, the Central Provinces, Bombay, Madras and the Congress Muslim members from the North Western Frontier Province were attending its sessions.

The Labour Government had appointed Lord Louis Mountbatten as the Governor-General of India to carry through the Cabinet Mission's plan and to transfer power to Indian hands by June, 1948. He failed to get accord in the interim Government and found it impossible to persuade the Muslim League to join the Constituent Assembly. He held consultations again. He now offered a new plan on behalf of the Government of England. He agreed to transfer power into Indian hands by August 15, 1947 and proposed a partition of India. British Baluchistan, Sind and Muslim parts of the Punjab, Bengal and Assam together with the North Western Frontier Province, if a new election there so decided, were to form the Pakistan ; the rest of British India was to form the Dominion of India. The states were left to decide for themselves but the Government hoped that they would join one Dominion or the other. The British Government, as in 1942, refused to recognize any state or groups of states as a separate Dominion. The Constituent Assembly was now to be divided into two sections representing members from Pakistan or India. The Central Legislative Assembly was to be dissolved and the two Constituent Assemblies were to take its place as central legislatures in the

two new Dominions. A tentative division of Bengal, Assam and Punjab was suggested but final boundaries were to be fixed by a Boundary Tribunal presided over by Sir Cyril Radcliffe as arbiter.

The Muslim League was jubilant because it had after all got Pakistan even though it was 'truncated'. The Congress accepted the plan as the best in the circumstances. The Sikhs gave it their support with some mental reservations.

On July 18, 1947, the Indian Independence Act was passed to make provisions for the setting up in India of two independent Dominions. The Boundary Tribunal gave its award on August, 14, 1947 and on August 15, 1947 a Dominion of India came into being consisting of the whole of India except Sind, Baluchistan, North Western Frontier Province, West Punjab and East Bengal. It thus included the United Provinces, Bihar, Orissa, Western Bengal, Assam, Madras, Bombay, Central Provinces and Eastern Punjab.

CHAPTER XXV

THE DOMINION OF INDIA

On August 15, 1947, India joined the Dominions of the British Commonwealth. The Governor-General became a symbolic head of the government appointed at the recommendation of the Prime Minister. The Executive Council gave way to the Council of Ministers meeting under the chairmanship of the Prime Minister. The Government of India Act, 1935 was still the Constitution Act but now it stood amended by the Independence of India Act and by the India (Provisional Constitution) Order of 1947 and several subsequent Orders.

The Dominion of India now consists of Governor's provinces, Chief Commissioner's provinces and the states acceding to the union or merging in a province. All the states within the boundaries of India have acceded to the Union except Hyderabad where a plebiscite will soon decide the ultimate future of the state. Some of the acceding states have formed new provinces of the union, others have joined together to form 'viable' units of the federation, some more have merged into the neighbouring provinces and a few still retain their independent existence. Thus Himachal Pradesh has absorbed the hill states of the Punjab and is now a Chief Commissioner's province, Kutch forms another division now administered by the Union directly. Bombay, the Central Provinces, Madras, Orissa, Bihar and the United Provinces have absorbed most of the states within their borders. The states of the plains of the Punjab, of Saurashtra, most of the states of Rajputana, the Central Indian states of Gwalior, Indore and Malwa, Alwar and Bharatpur, Reva and Panna with the neighbouring smaller units have all formed into unions as Eastern Punjab States,

Saurashtra, Rajasthan, Madhya Bharat, Matsya Pradesh and Vindhya Pradesh. The states of Travancore, Cochin, Mysore, Jodhpur, Jaisalmer, Bikaner, Jaipur, Bhopal, Tehri Garhwal, Tripura, Khasi-States, Manipur, Rampur, Benares and Bhopal, besides Kashmir and Hyderabad are the only states now left in existence. The centre now governs directly Himachal Pradesh, Cuch, Coorg, Panth Piploda, Ajmer and Merwara and Delhi. Thus the total number of the units of the Indian Federation has been reduced to about 50 which is not a large number considering the population and area of the Dominion.

The Government of the Union is now carried on under a Governor-General by the Council of Ministers responsible to the Constituent Assembly meeting as a Dominion legislature. It must meet at least once a year when summoned to do so by the President of the Assembly at such a time and place as he thinks fit. The President can prorogue the legislature. Besides the ministers, the Advocate General, even when not a member of the legislature, can address the house. The Governor-General can require the attendance of the members in order to address it. He can also send messages to the house requesting the house to consider some measure recommended by him. A minister can take part in the proceedings of the legislature for six months without being a member thereof. A 'Self-denying clause' imposed by the members on themselves requires that provincial ministers will not ordinarily attend the Dominion legislature. One sixth of the total number of members forms the quorum for the transaction of the business of the house.

Members receive a salary as determined by the legislature. All questions are decided by a majority of votes. In case of a tie the presiding officer exercises a casting vote. Members enjoy freedom of speech in the legislature and cannot be punished for anything said by them on the floor of the house.

The budget is presented annually to the legislature. The expenditure on the salary and allowances of the Governor-General, the ministers, judges of the Federal Court and the High Courts and interest is charged to the revenues of the Union and is not subject to the annual vote of the legislature. All of these except the salaries and allowances of the Governor-General can be discussed during a discussion of the budget. The rest of the estimates is presented to the legislature in the form of demands for grants which may be reduced or entirely rejected by the legislature. Supplementary estimates for expenditure for excess grants are similarly treated. No motion can be made for incurring expenditure or increasing any demand for grants. Bill increasing old taxes and raising new ones can only be introduced by the members of the government.

The dominion legislature at present can make laws on all subjects for the areas directly under its control, on all subjects not covered by the provincial list for all the territories forming part of the provinces of the Union and for such subjects in the acceding states or unions of states as they have surrendered to the union by their Instruments of Accession.

The Dominion Council of Ministers consists of a Prime Minister, a Deputy Prime Minister, ministers in charge of various departments, deputy ministers, a Minister of State and ministers without porto-folios. The previous departments of the secretariat have become ministries. Neither the number of ministers nor of ministers of various types is fixed by law and can be increased as convenient.

A secretary heads a ministry as its permanent head. Some departments have legal advisors, secretaries-general and advisors attached to them besides the usual secretariat establishment.

At present the ministers number fifteen, External Affairs, Home and State, Education, Public Health, Finance, Defence, Transport, Food, Commerce, Industries, Labour, Law, Finance, Refugees and Communications.

The Council of Ministers meets at the office or the residence of the Prime Minister. It has a secretariat working under the Prime Minister. At present it forms a hybrid collection of 'all the talents' drawn from among the members of the Constituent Assembly. Formation of policy occasionally has taken time. Differences of opinion among the ministers have sometimes come into the open and caused inconvenience to all concerned. Since the formation of the new government, a Finance Minister had to resign for exceeding his discretion without Cabinet authorization. The Council has however worked as a team and has proved itself successful in handling the unprecedented problems forced on its attention.

Government of the provinces continues to be carried on under Governors now appointed by the Governor-General. The Governor is the constitutional head of the province allowing its government to be carried on by the Council of Ministers. They are chosen by him and hold office during his pleasure. The Governors have summoned, the recognised head of the majority party in their provinces to aid them in the formation of ministries and have accepted the change of leadership in the party as reason enough for a change of ministry. In Madras and Bengal alone has there been a change in government consequent upon change of party leadership. The provincial government in the various provinces continues to be organized as before except that the salary of the Governor and the staff appointed to assist him in supervising provincial administration have been reduced in most provinces.

The division of function between the centre and the provinces as in the original Act continues. As before, in case of 'a grave emergency' notified by the Governor-General in the Government of India Gazette, the Dominion legislature can, on the motion of a minister legislate on all subjects including those exclusively under the provinces. Such laws remain in operation for six months after the emergency is over. During the emer-

gency the Dominion Government can issue directions to the provincial government for the carrying out of its own functions or for performing some federal duties on behalf of the Union. The Dominion Government can also issue directions to the provincial governments so as to prevent any grave menace to the peace or tranquillity of India or any part thereof. Complaints as to interference with water-supplies in any province will be entrusted for report to a competent commission by the Governor-General who will pass such orders on the report as he thinks necessary. The Dominion Government may collect and distribute succession duties, estate duties, federal stamp duties, terminal taxes on goods and passengers and distribute a part of the receipts among the units of the federation.

A prescribed percentage of the local collections of the income tax is also similarly distributed among the provinces. The organization and functions of the provincial legislatures continue to be as described in Chapter XXI. Any new subject of administration will be assigned either to the Dominion Government or the provincial government in accordance with the decision of the Dominion Government.

CHAPTER XXVI

THE FEDERAL COURT

Uptil 1937 the Government of India was an indivisible unit. All governmental functions were legally within the ambit of the Governor-General in Council. The Governor-General in Council could issue administrative orders to the Governor in Council which he was bound to carry out. If there was a conflict of opinion between a provincial government and the central government on any question, the central government decided the matter administratively and its decision was binding on the province.

The Government of India Act, 1935, changed all this. The functions of government were divided between the provinces and the centre by law. In the provinces, administration is carried on by the Governors and at the centre by the Governor-General. Thus twelve distinct governments were formed, eleven in the provinces and one at the centre. Their functions were defined in the Constitution Act. In the spheres entrusted to them respectively under the Act, every one of these twelve governments, was supreme. Disputes between these twelve units about their respective powers were likely. They could no longer be appropriately settled by the central executive. It may itself be a party to the dispute and therefore its decision would not be considered either impartial or just. As among citizens, it was not only necessary that justice be done among these disputant governments, but that the parties should be convinced that impartial justice was done. As in most other federations the Federal Court in India was set up, "to provide a peaceful and national solution of differences, which in the absence of an impartial and independent arbiter might inflame

passions and even issue in violence." Its establishment extended the rule of law to inter-provincial disputes " which had hitherto been subject to executive determination. "

The Government of India Act, 1935, set up a government with a written constitution. It was necessary now to provide an instrument for giving a uniform interpretation to its provisions in India. Hitherto it had been done by the High Courts or courts of equivalent jurisdiction in various provinces. But these eleven courts could, and in fact did, some times differ in their interpretation. This was likely to lead to doubts and disrespect for these decisions. The Privy Council in England could impress uniformity but it lay far away and was expensive. Hence it became necessary to provide in India a tribunal capable of rendering independent interpretation of the constitution uniformly applicable throughout India.

The Government of India Act is " a measure of bewildering complexity. Its adjustments and its checks and balances are extremely delicate." It confers legal rights and immunities on a number of groups, persons, classes, and authorities laying down limits to the authority of the executive, provincial and central. At the same time it declares that in providing services, amenities, employment or other benefits, the State should make no distinction among Indian citizens on account of caste, creed or colour. This also necessitated the creation of a tribunal whose decisions would be equally accepted by communities promised special treatment or excluded from those benefits.

The Federal Court was set up in 1937 to answer all these needs. Till October 1948, it consisted of a Chief Justice and two Judges. The total number of Judges was then raised to five and the Court assumed ordinary appellate jurisdiction.

The Federal Judges were drawn, till 1947, from the Indian and the British bar, the bench, and curiously enough, from among the Indian Executive Councillors. The British element was recommended for appointment by the Lord Chancellor and the

Secretary of State for India, the Indian Judges by the Governor-General. Like the High Court Judges they held their appointments from the Crown. Their salaries are charged to the revenues of the Central Government without annual vote, the cost of their establishment is determined by the Governor-General and provided as a non-votable item in the annual budget. This secures their independence from the political influence of the legislature. Their independence and impartiality is further secured by providing that they would retain their seats in the Court up to the age of 65. A Federal Court Judge may be removed earlier for infirmity of body or mind, or misbehaviour, on the report of the Judicial Committee of the Privy Council on a reference from the Crown.

To secure the Court against a suspicion of approaching a case with any prejudice or prepossession, it has been provided that temporary judges may be appointed to determine a case when one or more of the permanent judges have handled a case at an earlier stage. This makes it impossible for a judge to sit in appeal in the Federal Court in a case which he may have argued at an earlier stage for one of the parties as a lawyer or decided as a judge.

The court sits at present as a full bench of all the judges. Its decisions are given by the majority opinion, the dissenting judge usually writes a dissenting judgment giving his own opinion. Judges sit singly in chambers to pass orders assessing costs and performing other similar functions. In its federal division the Court exercises appellate, original and advisory jurisdiction. It can entertain and determine all cases in appeal from the criminal or civil decisions, final or interlocutory, of the High Courts, Chief Courts or Judicial Commissioners' Courts, if the Court against the decision of which the appeal is lodged gives a certificate that the case involves a substantial question of the interpretation of the Government of India Act, 1935 and Orders-in-Council passed thereunder. This is the

only way in which a private citizen can at present approach the Federal Court. When the Federal Court has once admitted an appeal, it is open to the parties to argue the case on all counts, not confining themselves to the constitutional issue alone. The Court reviews the case in all its aspects and gives its decision on the merits of the entire case as disclosed before it or in an earlier Court. It allows even new issues to be raised.

The Federal Court has entertained appeals against the interlocutory orders of a single Judge of the High Court against which an appeal could be lodged to a bench of the High Court.

The Court entertains original cases of disputes between various governments in India, central or provincial. Such disputes may turn round any question of fact or law involving a question 'on which the existence or extent of a legal right—a right recognizable by law and capable of being enforced by the power of a State but not necessarily in a Court of Law-depends.' It has exercised jurisdiction in suits by provinces 'against the Governor-General in Council for a declaration that an Act is ultra-vires where the Governor-General had a sufficient interest in the Act and existence of a legal right alleged to be possessed by the province depended upon the validity of the Act.' It has further held that 'if the cause of action arises against a subordinate body, the provincial or the central Government can take proceedings against the provincial or the central government which exercises control over the subordinate body.' So far original cases that have come upto the Court have been those of disputes between the provinces and the central government. In one of these cases, the validity of rules and regulations made prior to 1937 was challenged. The Court held that as all laws in force at the time the Government of India Act was brought into force were adopted bodily

by an Orders-in-Council, it was open to it to decide what were the laws in force on 1st April, 1937.

The third type of cases came before the Federal Court in its advisory capacity. The Governor-General in Council could refer a question to the Federal Court for its opinion or report. It may be a question of interpretation of an action already taken under the Government of India Act. The Governor-General could also ask for the opinion or the report of the Court on a course of action proposed to be taken by the central government. As a recent case demonstrated, such a question may be framed in such wide terms as to make a definite and useful answer impossible. Whatever the nature of the question referred to, the opinion given by the Court in such a reference is "neither binding on the other party nor on the courts below. It has no more effect than the opinion of the law officers of the Crown." It may, however, sometimes, prevent hasty action by the central government, the appropriate remedy against which might otherwise cost the citizen or the government likely to be adversely affected a good deal.

The Court also entertains appeals against the orders of one of its own judges given in chambers about processes of the Court. In such cases all the judges sit together, the judgment of the Court is given by the judges not concerned with the original decision though the trying judge may write a short judgment.

A fifth type of cases came before the Federal Court when the Bombay High Court referred back a decision of the Federal Court in a Bombay case ostensibly for a proper order. This reference back, sent along with a new argument on the case, constituted an attempt at flouting the Federal Court and teaching it its business. Needless to say, the Federal Court refused to revise its previous judgment and thus maintained its dignity and reputation.

The Governor-General can request a Federal Court Judge to undertake any other work with his consent. The first Chief Justice was called upon to interpret the undertaking given by the Thakur of Rajkot to Sardar Patel about setting up a constitutional committee. Another Judge twice represented the Government of India in China and England in a political capacity.

The Court hears and determines cases with the help of Federal Court advocates. Senior advocates can appear before it only with the assistance of juniors. It has also appointed agents who alone are authorised to act on behalf of their clients. It has fixed the fees of the advocates appearing before it.

When a case is filed by an agent before the Court, proper notice is issued to the parties. If the Court thinks that other interests are also likely to be affected it can send notice to their representatives as well. When the case comes up before it, arguments are addressed to it not only by the original parties to the dispute, but on behalf of those interests also whom the Court summoned. After hearing all the parties, it delivers its judgment at once or on a subsequent date. If it accepts an appeal, it orders that its judgment be substituted for the decision of the court appealed against. The Federal Court has no machinery of its own for carrying out its judgments; they are thus carried out by the High Court or other equivalent courts as their own judgments through their own agency. The Federal Court may itself dispose of a case finally or decide a point of law or fact and send the case back to the lower court with such instructions about proceeding with it as it may think necessary.

Appeals against the original decisions of the Federal Court interpreting the Constitution Act lie to the Privy Council. In other cases special leave to appeal may be given by the Court or obtained from the Privy Council. The Court usually refuses to grant special leave to appeal 'where its decision is unanim-

ous, the law clear and the interests involved not substantial.' The Privy Council may grant special leave to appeal to the Crown after the Federal Court has turned down the request.

It was unfortunate that, as the Chief Justice observed in an important case, the central government during the war did not show much readiness to respect its decisions. Some provincial governments and at least one High Court displayed a similar attitude.

But the Federal Court has come to stay as the 'conscience and the balance wheel' of a Federal constitution.

It has now been vested with appellate power so that all civil cases can be heard in appeal here first before being sent to the Privy Council.

The new constitution provides for the setting up of a Supreme Court which will perform these functions along with certain other functions so far performed by the Privy Council.

CHAPTER XXVII

THE JUDICIAL SYSTEM

Preservation of law and order is primarily a function of the provincial government. On its preventive side it includes police arrangements of all types, traffic police, preventive staff, railway police, and in some provinces military police. In most provinces the central government also maintains its own branch of the Central Criminal Intelligence Bureau. On its judicial side the provincial governments maintain a set of courts to decide civil and criminal disputes.

The highest courts in the provinces are variously known as the High Courts, Chief Courts, or Judicial Commissioners' Courts, according to their status. The High Courts at Bombay, Madras and Calcutta owe their origin to the High Courts Act of 1861. They have inherited the original jurisdiction of the Supreme Courts and the appellate jurisdiction of the Sadar Nizamat and the Sadar Diwani Adalats. In Bombay a separate civil court has now taken over the original civil functions of the High Courts in suits below Rs.10,000/-. The High Courts at Allahabad, Lahore, Patna and Nagpur superseded appellate courts of a lower status. These four High Courts do not possess the ordinary original jurisdiction which the three presidency High Courts possess, though they possess extraordinary criminal and civil original jurisdiction in cases of contempt and divorce. Every High Court consists of a Chief Justice and a specific number of judges, appointed by the Governor-General. If pressure of work renders the appointment of more judges necessary, Additional Judges may be appointed to hold office for two years, but the total number must not exceed the maximum laid down for that Court. The

Governor-General appoints an officiating Chief Justice or an officiating judge in place of the Chief Justice or a puisne judge on his inability to act.

The Judges of the High Court hold office during good behaviour. Their salaries are fixed by the Governor-General. A judge remains in office till he is sixty-two unless removed earlier on the recommendation of the Privy Council for infirmity of mind.

The provincial governments provide sufficient sums for the High Courts and the courts below.

The Judges of the High Court are drawn from among the senior members of the English or the Indian bar or promoted from among the senior officers of the judiciary.

Appeals lie from the decisions of the highest provincial court either to the Federal Court and from there to the Privy Council or direct to the Privy Council.

The subordinate judiciary in the provinces can be divided into three classes, the criminal courts, the revenue courts and the civil courts. The revenue courts are all officered by the executive officers who collect land revenue and also decide cases arising out of its administration. The provincial legislatures have now been authorised to extend the supervision and superintendence, and therefore the jurisdiction, of the High Court, to the revenue courts as well.

The criminal courts are presided over by salaried and honorary magistrates. Most of them perform other administrative functions as well. Trials for more serious crimes are held by the Sessions Judges stationed in most of the districts. A trial before a Sessions Judge comes after committal proceedings before a magistrate. Here the prosecution sketches its case so as to prove that it has a *prima facie* case against the accused. If a *prima facie* case cannot be established the accused is let off, otherwise he is committed to take his trial at the Sessions Court.

In a case involving capital punishment the Sessions Judge sends the case up to the High Court with his own recommendation. Capital sentences can only be inflicted when confirmed by a High Court.

The court of the Sessions Judge is a court of appeal as well. It entertains appeals against the decision of the lower magistracy including the First Class Magistrates and the District Magistrates.

On the civil side there is a series of courts from the High Court downwards. In small towns there are subordinate judges, sometimes called Munsifs. Then there are subjudges of higher status who are authorised to hear suits of higher values. Appeals lie either to the senior subordinate judge or the Sessions Judge who acts in civil cases as a District Judge.

In some provinces Panchayats have also been formed which, among other things, decide petty civil and criminal cases. In most cases there is no appeal against their decisions.

The courts are used here, as in many other countries, to interpret the constitution.

The Civil Judges are appointed by the High Court after a public competitive examination carried on by the Public Service Commission. The magistrates are in their lower grade almost entirely recruited by nominations. Members of the Provincial Civil Service are appointed either as a result of an examination or drawn from various sources, competition, promotion from among the members of the subordinate service and nomination.

CHAPTER XXVIII

DISTRICT ADMINISTRATION

Every province is divided into a number of districts, the territories directly administered by the Central Government are usually districts in their own right. Thus every square mile of British Indian territory lies in one district or another. The detailed work of administraton on the spot is carried on through the agency of district officers known as Collectors in some and Deputy Commissioners in other provinces. "The Collector is the general controlling authority over all departments in his district . . . . . He is the real executive chief and administrator of the tract of country committed to him, and supreme over everyone and everything except the proceedings of the courts of justice." The office emerged in place of the Karori-Fojdars who had become the administrative heads of the Sarkars while Mughal provincial governors were becoming independent and founding dynasties of their own. The path to the British acquisition of power in Bengal was eased by the British assuming the Diwani (Revenue) functions alone in 1765. To supervise the collection of revenue in the districts, British Collectors were appointed. When the British acquired other administrative functions nothing was more convenient than entrusting those new functions to the Collectors. Lord Cornwallis separated the executive and judicial functions, but impelled by economy Lord William Bentinck again reverted to the pre-Cornwallis systems. The Collector was therefore left without a serious rival in the district. As the functions of the state grew, they all came to be discharged through him. Thus to-day the Collector has become the respository of all administrative power in the district.

His main function is to collect the land revenue and preserve law and order in his district. At one time the Collector was almost the maid of all work in the district. But the increased specialization now required for the ever-expanding functions of government has placed at the district headquarters a corps of officials in charge of the multifarious activities of the government. The Superintendent of Police " is his assistant for police purposes " and acts as " the head of the district police force, " regulating its internal economy, maintaining discipline in its ranks and securing the regular and punctual performance of its preventive and multifarious executive duties. The Superintendent is assisted by a deputy or an assistant superintendent at the district headquarters and a large number of Sub-Inspectors of Police holding charge of the police stations in which the district is divided for police purposes. Here all crimes are first reported and most of them investigated, warrants for cognizable offences obtained and served, births and deaths in rural areas recorded, accidents reported, permission, where necessary, obtained for public processions, and likely breaches of the peace prevented. In big cities, the police controls and regulates traffic and enforces municipal by-laws.

The district is mainly a revenue unit and most of the district staff under the Deputy Commissioner is engaged in revenue work. The treasury officer regulates and supervises the receipts into and withdrawals from all the treasuries in the district. One or more revenue assistants serve as the immediate heads of the revenue work in the areas under their charge. The recruitment, postings, thansfers and questions concerning discipline of the revenue staff pass through their hands to the Collector as also the appointment of village headmen and other functionaries. Through them correct records of rights in land in the villages are maintained and collection of land revenue rendered easy.

The Collector is also the District Magistrate. He has a

corps of magistrates under him at the district and tahsil (taluka) towns to whom he distributes work. Most of these act in a dual capacity like him, hearing and determining cases and performing administrative duties. In his judicial capacity the District Magistrate is under the District and Sessions Judge of his district to whom appeals against his own and his subordinates' decisions lie. The services of the magistrates are also used for preventing serious breaches of the peace. Outside the ranks of these officers the Civil Surgeon acts as the chief medical officer in charge of dispensaries and hospitals in the district, while the preventive side of medical practice is organized under the District Medical Officer of Health. With the help of an establishment maintained by the Local District Board he prevents epidemics, makes arrangements for vaccination and inoculation, maintains a staff of trained midwives and nurses in various centres and supervises the rural dispensaries and subsidized medical practitioners.

Most districts have an official of the agricultural department, heading the staff maintained for the improvement of cattle, dissemination of useful information on improved methods of agriculture, distribution of seeds of good quality and making suggestions about taking up subsidiary small scale industries.

The agricultural department is helped by the efforts of the co-operative societies. Their rapid spread necessitated a network of officers for the supervision of their work; assistant registrars and inspectors of the co-operative department. They supervise the work of the existing societies and exert themselves for the spread of co-operative effort to new localities and now ventures and act as general welfare officers.

A district (or deputy) inspector of schools combines administrative and inspecting duties. He is the administrative head of the schools maintained by the District and Local Boards and inspects all schools, alone or in company with the divi-

sional inspector of schools, in order to maintain the minimum standard of educational efficiency. As the administrative head he chalks out and executes the policy of educational expansion in the district.

The forest department maintains in most districts an extra assistant commissioner, or assistant conservator or a conservator. They administer the "national" forests carrying out afforestation programmes. They help the private owners in preventing denudation of their lands by schemes of tree or grass plantation.

In provinces where irrigation works abound, an executive engineer or a sub-divisional officer maintains the running canals and executes such projects as might lie in his charge. Many of the government buildings and the larger part of the roads in most districts are looked after by the District Local Boards. More than one district therefore shares a sub-divisional officer in charge of buildings and roads.

The veterinary department looks after the health and welfare of domestic animals. A district has several veterinary dispensaries but usually a superintendent has charge of more than one district.

The recent enactment of social legislation has led to the appointment of a host of new officials. Shop inspectors, sales tax collectors and panchayat officers represent their departments and discharge new functions assumed by the state.

The central government maintains income tax officers and superintendents of post offices usually in charge of more than one district.

The Collector acts as the connecting link in all provincial departments. The local representatives of specialist departments of course look up to their own official superiors for technical guidance or preference. But the Collector has his say in the district programme of all the departments. He co-ordinates their work. He is also the chairman of the District

Board in the Punjab, but acts as the agent of the provincial government in supervising the work of the local bodies everywhere. He keeps himself in touch with the people by constant tours. He makes recommendations for filling nominated seats on local bodies, he recommends names for honorary magistrates, sub-registrarships and grants of jagirs, land, special pensions and awards. He exercises a large amount of patronage in his district.

The Collectors are usually drawn from among the members of the Indian Civil Service (now the Indian Administrative Service). Some, however, hold listed posts on promotion from the Provincial Civil Service.

Recent legislation has enormously increased the power and prestige of the district officers. It has also demonstrated the danger of most of the officers "going" political and performing propaganda on behalf of the party in power.

Except in Madras and the Central Provinces districts have been grouped in divisions under Commissioners. They perform certain specific functions in revenue matters and supervise the work of the District Boards and municipalities under them. Indian opinion generally considers them as post offices delaying the disposal of questions arising in the districts. It is claimed that they save the provincial secretariat much detailed work ; even if this be true, an expansion of the secretariat would easily make it possible for the provincial government to cope with the larger amount of references to it from the districts. This would surely speed up work.

CHAPTER XXIX

LOCAL SELF-GOVERNMENT

Administration raises two types of questions in a country. There are some questions which require a uniform solution applicable all over the country. There are others which are best solved locally. The solution of the local questions, it has been discovered by experience, can be best left to the inhabitants of the locality. They are better able to judge whether local services are being efficiently or inefficiently run; insufficiency of drinking water at Allahabad or Patna is likely to be resented more by the people of these localities than by the inhabitants of Delhi or Calcutta. Again, the local people are better able to devise new remedies for new wrongs emerging among them or modify old ways of doing things to suit the changing requirements of the times. These practical considerations give birth to local self-government.

The present organisation of local self-government in India is mainly a British gift. Not that India had no self-governing institutions before the advent of the British. The acquisition of territory in India by the British was usually accompanied by the destruction of all popular institutions in the country mainly because these institutions seemed to lie outside the main current of administration. But local problems continued demanding attention. First came the turn of the presidency towns. Certain problems had to be tackled there which had no counterpart elsewhere. Here lived a large number of Europeans. Various experiments were tried here for creating a local agency but with little success. Neglect of this aspect of administration at last produced effects which threatened to impair the efficiency of government. The outbreak of Cholera

in Bengal in 1861 seriously affected the health of the British troops and led to the appointment of a Sanitary Commission. Its report emphasized the need for sanitary arrangements all over the country, in villages as well as in cities. The sixties of the last century saw the assumption of public health and similar other functions by local officials in various parts of the country. In most cases they were helped by a number of non-officials usually nominated by the Collector of the district. Their presence was supposed to make it easier for the government to levy local rates for local purposes. All the work was done and all administrative authority was exercised by the officials. In the presidency towns justices of the peace were associated in the work of local government but here again administration was carried on by officials, a Commissioner of Police in Calcutta, a Municipal Commissioner and an accountant in Bombay and an official president in Madras. Some local needs were fulfilled in this way. In several other provinces the local officials, helped by non-official committees, tried to make police arrangements, establish and maintain schools and perform other functions in urban areas.

Meanwhile a deconcentration of authority took place in India by the Indian Councils Act of 1861 whereby the provinces were given the power of making local laws including financial measures as well. In 1870 came Lord Mayo's resolution on decentralization of finance which suggested, among other things, the levying of local rates. To do this successfully local interest was enlisted by calling for the co-operation of the people in managing the funds thus raised. This suggestion led to some slight changes in the organization and resources of the municipal and rural bodies in some places.

The beginning of local self-government as a conscious movement is associated with Lord Ripon. Before him there were some local arrangements for meeting local needs in several towns and rural areas. But these formed part of the work of

the local officials. There were hardly any traces of election, much less of independent authority. No specific powers were granted to local authorities. Lord Ripon recommended to the local governments to set up local self-governing institutions in rural and urban areas, armed with larger specific powers, enjoying independent authority and deriving their powers mainly from the people. He frankly confessed that the new elected bodies might not succeed in looking after local affairs as well as the local officials did. He was prepared to sacrifice efficiency in the interest of political awakening and education in self-government.

Lord Ripon issued a general resolution on local self-government, it was left to the local governments to give its principles a practical shape by local legislation. The local governments were not, however, as generously inspired. Though the local Acts passed fell short of the standard he set up, local self-government however got a start. In most provinces elected district and sub-district councils were set up to look after rural needs. Elected municipalities were set up in towns. Most of the municipalities had elected chairmen. The powers and functions of the municipalities and district councils were specified and the urban areas were to enjoy some freedom from official central.

The growth of these bodies became stunted on two accounts. The officials looked for results and lacked Lord Ripon's imagination to sacrifice efficiency at the altar of political education. Municipal elections did not attract able men of repute because they had nothing to hope for from making a success of local self-government. A retrogressive movement started when the various provincial governments began to make large use of their reserve powers. When Mr. Montagu visited India in 1918 he found local self-government still a part of the official machinery of the district administration and curiously lacking in every thing that could provide the political educa-

tion Lord Ripon had in mind. 'Prior to the reforms (Montagu-Chelmsford) local self-government in India belonged to the deconcentrated type, the district officer was an officer of the Central Government operating in a particular district. As chairman of the District Board and often of one or more municipalities, he was carrying out the will of his official superiors. It was just one of his many activities ..... In effect outside a few municipalities, there was in India nothing that one should recognize as local self-government of the British type."

The inquiry into the Indian constitutional problem, following the definition of the British policy in India, led to the issue of a resolution on local self-government in India in May, 1918.

At present local self-government in India takes the form of village panchayats and district boards in rural areas, corporations, municipalities and small town committees in the urban areas. All these institutions contain a preponderant element of elected members where they are not entirely elected. The official element in their composition has almost entirely disappeared except in the district boards. Some of the corporations (municipalities in the bigger cities) enjoy the right of electing aldermen —members not elected by popular vote but honoured by the elected members by being called upon to form part of the corporation. In most provinces the franchise for the local bodies is as low as that for the provincial legislatures though in some provinces women are excluded as also ex-members of the fighting forces.

Financing of local bodies raises several important questions. At one time cesses on land revenue and octroi on goods formed the main source of income of the district and municipal boards respectively. Octroi is a time honoured tax but the cost of its collection is very heavy in comparison with the total amount realised. In several places octroi has now been replaced by one form or another of a non-refundable low tax on goods

entering a city, in others direct taxes have been levied in the form of Haisayat tax on ranges of income. The development of municipal services has led to the imposition of several other taxes as well. Thus there are taxes on means of conveyance, on certain methods of selling goods (by hand carts), on some trades or professions besides charges for municipal services rendered. A house tax has been imposed in several municipalities on residential properties. In rural areas the Haisayat tax has usually been raised. Fines for contravening municipal by-laws are also credited to local funds. Another substantial source of income lies in the grants for specific purposes from provincial revenues.

The local bodies discharge several functions. They try to promote human welfare and provide certain conveniences for civilized life. Welfare is promoted by providing pre-natal and maternity clinics, maintaining health visitors and opening schools. Good life is secured by prevention, removal, and provision services. If a citizen is ill, there are, in urban and rural areas, dispensaries where he receives treatment. Bigger cities maintain separate hospitals for infectious diseases. Children are vaccinated against small-pox, in larger cities arrangements exist for inoculation against cholera, typhoid and other diseases likely to rage in an epidemic form. The removal of dirt from the public streets and disposal of the sewage, house refuse and night soil further promote welfare. The introduction of Pure Food Acts to a municipal or rural area makes it possible for the local authorities to regulate food supplies, particularly milk and ghee and their preparations. Provision is thus made for the supply of articles of standard qualities to the citizens. Similarly municipalities and district boards provide water and electricity. Municipal by-laws (rules) secure fresh air and light by regulating the erection of buildings, particularly by the provision of ventilators and skylights in them. They provide gardens and parks.

The local bodies offer several conveniences to their citizens. They build roads and footpaths, lay tram lines and drain pipes, establish markets, build houses, run buses and provide electricity. House building in Indian cities has usually been undertaken by Improvement Trusts on which local bodies are also represented.

The autonomy which the various local bodies enjoy varies from institution to institution and from province to province. The most autonomous of these bodies is the Calcutta Corporation modelled after the English borough councils. It elects its own Mayor, chairman of the general body, appoints its Chief Executive Officer as also other departmental heads. It carries on its work independent of any control from the Provincial Government. Madras and Bombay have corporations.

Municipalities flourish in other cities. In some provinces they have been graded according to the functions they perform and independence of official control they enjoy. Corporations and municipalities divide their members into smaller sub-committees, every one of them looking after some specific municipal function and all working under the supervision of the whole house. A sub-committee usually works under a chairman and has an administrative officer at the head of the specific branch of municipal service it looks after. The Corporations of Bombay and Madras have general committees which supervise municipal administrations.

The district boards are similarly organized for work in the rural areas. In most of the provinces (except the Punjab) they have elected non-official chairmen at their head. They still have a nominated element in some of the provinces.

The village panchayats look after some of the local needs. In some provinces they also discharge judicial functions. They consist of members elected by villagers. All work is done by the members themselves ; they employ no administrative officers except menial servants.

The successful working of self-government in local administration requires an almost wholesale revision of the law and practice of local self-government in India today. The provincial governments should arm the local bodies with ample powers for carrying out their functions which should be laid down by statute. In return for subsidies granted from its own funds for various purposes, the provincial government should lay down the minimum conditions which must be fulfilled by these bodies for earning these subsidies. A separate set of inspectors of various local activities should be appointed for the continuous outside supervision of and advice to local bodies. At the provincial secretariat, a separate department of local self-government should be set up, relieving the Collectors and Commissioners of all their connection with local bodies. It should receive the reports of "inspectors" which should be published in order to acquaint the public with the state of affairs in their midst. Local bodies should have complete control over their staff, appointing and dismissing them. In order to provide against nepotism and curruption, the qualifications for various jobs should be laid down by the provincial government and should never be departed from. Appeals by municipal servants should lie to the Public Service Commission. The relations between the committees and sub-committees and the administrative heads should be clearly laid down by law. The popular representatives should determine the general policy and enunciate the principles of administration in the various departments, leaving the detailed administration in the hands of the executive heads. This should not, however, prevent their reviewing the action of the administrators and sitting in judgment upon them.

The Port Trusts and the Improvement Trusts look after certain aspects of local administration. They rose originally on account of a distrust of local self-governing bodies. Though the local bodies are representated on them, other interests are

predominant. They include a substantial number of nominated members and most of their administrative heads are government officials placed on deputation with these bodies. The Improvement Trusts usually have charge of the general aspect of town building plans and sometimes of housing problems. The Port Trusts manage the dockyards and other areas.

An anomaly in local administration to-day is the Cantonment Board. The cantonment areas house troops under the central government but form a part of the provincial territories. The organization of local services in the civil areas in the neighbourhood of the cantonments has been entrusted to the central government which sets up Cantonment Boards under the chairmanship of the chief military officer of the area. A substantial part of the members is now elected, civilian executive officers have also been appointed to look after the work.

CHAPTER XXX

POLITICAL PARTIES

Political parties are an inevitable growth of the struggle for power. Exercise of power breeds jealous rivals anxious to displace those in authority. In autocratic or dictatorial governments, however, those who oppose the rulers with a view to ousting them from authority run the risk of losing their heads. It is in the representative form of governments alone that political parties are allowed a free life.

There are people who deplore the existence of Parties in the modern states. They would not have "Statesmen" sacrifice at the altar of party (a part) what is given them for the service of the nation (the whole). Such arguments derive their inspiration either from the dictatorial philosophy of today or the factious experience of the past. Political parties in the form of groups of persons united either in their fundamental beliefs on some, at least, of the pressing problems of the day or in their general plan of immediate political action are a recent democratic growth. They emerge when instead of breaking heads people start counting them. 'The true democrat has a suspicion that he may not always be right. He is therefore tolerant of other people's opinion. He is acquiescent in the system of counting votes' ..... 'A majority may not be best capable of determining what is good for humanity, but it is probably better able than the minority to determine what is good for the majority ; if the majority is also tolerant, it will not in the process injure the minority more than it can help.'

Men can get united in their political beliefs or plans of action for various reasons. Democratic government is only possible if political parties are based on beliefs which their votaries

are free to change for political reasons of their own. Thus though race, religion or caste might unite citizens in a political party enjoying or aiming at capturing political power, these cannot form the basis of democratic government. Their membership is immutable; one cannot and does not usually renounce one's religion, race or caste. No political arguments can be successfully addressed to members divided in such political parties. Their majorities are permanent; governments formed by such majorities might last for ever. They really represent one party dictatorial state rather than a democratic government.

Political parties in the sense of groups of citizens united together in their political opinions or plans of action for capturing political power are a thing of recent growth in India. Till recently India was a subordinate department of the distant British Government. For more than half a century Indian public opinion—whatever of it there has been in existence at the time—was busy forming itself into groups, big and small, aiming at securing transfer of power from British hands and preparing for the exercise of such power as and when transferred into Indian hands. The earliest of these parties is the Indian National Congress, being the biggest party in the world so far as membership is concerned. It had four million members in 1941. It started in 1885 as a small group of Indians and Britishers interested in securing administrative reforms and meeting annually at some place in British India. It was so far from being an anti-British organization in its origin that it narrowly escaped having the local Governor as its patron and the Governor-General as a distinguished visitor in its first session. It judged Indian administration by current liberal ideas of nineteenth century England. Its ultimate aim was defined as the establishment of parliamentary institutions in India. This was however a distant goal in the beginning. It drew its strength from its condemnation of certain aspects of British

rule in India about which even some Britishers—including Indian Civil Servants—felt a vague disquietude. It couched "its protest in constitutional form" and based it on the inherent justice of its demand and a belief in the British sense of fair play. It soon developed into a national forum. All classes and communities of politically conscious Indians came to be represented among its members. Hindus, Muslims, Parsis and Christians all appear on its roll of honour. Soon, however, officials began to look askance at its activities. An attempt was then made to rally to the side of the administration Muslims who till then had been looked upon with suspicion as disloyal. Eager to be of service to the British Government in India when it was being assailed by hostile criticism, some of them under the lead of Sir Sayyed Ahmed Khan kept aloof from the Congress. It was not because they did not support the Congress demand for reforms ; it had the support of radical British politicians, some retired Civil Servants, and British members of the professional classes in India. The Muslims thought that they would be better able to overcome their own political backwardness by asking for favours from the British Government in India whom naturally they did not want to embarrass by joining in a hostile criticism of its acts or intentions.

The partition of Bengal by Lord Curzon in 1905 led to an agitation which brought the masses for the first time directly within the fold of the Congress. It created the first mass movement. It also led to an open breach between the extremists and the moderates within the ranks of the Congress, the moderates succeeded in keeping out the extremists. Then came the War. At Lucknow in 1916 the fundamental similarity between the political demands of the Congress and the Muslim League was demonstrated by the Congress-League Pact by which both accepted a joint demand for further reforms in administration leading to self-government. The war ideology of the allies

put fresh heart into the Indian struggle. Differences of opinion on the attitude towards the Montagu-Chelmsford reforms led to the secession of the moderates from the Congress in 1919. It is an eloquent testimony to the place the Congress had come to occupy in the country to find that just as the extremist-moderate quarrel in 1907 had sent the extremists to political wilderness, it did the same to the moderates now. Meanwhile the Congress became broader bottomed. The agitation against the Rowlatt Bills, the sense of indignation and frustration brought by the way in which the Punjab was administered under the Martial Law in 1919, and the Muslim fears of the fate of the Sultan of Turkey as their Khalifa brought a very large number of Hindus and Muslims alike under its banner. The Congress boycotted the first elections under the Government of India Act of 1919 and entered on a campaign of direct action. Under the leadership of Mahatma Gandhi it evolved a new instrument of political warfare. The old method of petitioning the British Government in India for the redress of Indian grievances was given up as unsuited to a campaign for Dominion Status. The British, it was felt, might have been persuaded to introduce reforms here and there in the administration if they were convinced that such reforms were necessary and would not impair the efficiency of administration. But now when after a war to make democracy safe in the world, they had not, it was said, made it safe in India against themselves, it could not be expected that any further substantial step towards self-government could be secured by appealing to their sense of fair play and justice only. The denial by some British publicists and politicians of the existence of any widespread desire among Indians at large for self-government, it was felt, could only be met in one way, by demonstrating their willingness to suffer for it. Thus was born the doctrine of non-violent civil disobedience and non-co-operation or Satyagraha, the new weapon for securing self-government.

It was a unique move to call upon vast masses of men to suffer silently and willingly for the assertion of rights they had never enjoyed. It had never been tried on such a gigantic scale anywhere else in the political world. It was not surprising therefore that some who had served the Congress well so far found it impossible to accept its new technique. It was still less surprising that, roused to direct political action for the first time, the masses sometimes forgot the wholesome limitations under which alone the call to offer civil disobedience had been issued. But though civil disobedience could rouse citizens to political consciousness and assert the determination of Indians to secure self-government, it was soon discovered that it could secure no immediate concessions from the British Government. Thus the Swarajist wing of the Indian National Congress was born, anxious to demonstrate in the Indian legislatures, provincial and central, that the existing political structure did not command the support of the newly enfranchised masses. It failed to secure majorities except in Bengal and the Central Provinces where it refused to assume office in the transferred subjects under the limitations it had been condemning so long. It became the official opposition in the central legislature where again, year in and year out, it went on recording the absence of Indian support to the existing government, now by rejecting the yearly demand for supplies for the establishment of the Governor-General in Council, now by rejecting the Finance Bill.

When the Simon Commission came out to India to enquire into the question of further progress towards responsible government in India, the newly acquired political consciousness of the country found its expression in an almost complete boycot of its labours by various political parties. Non-co-operation as a weapon thus found its new votaries. As a challenge to the appointment of the Simon Commission, the Congress defined its goal as the attainment of Purna Swaraj--national

government-in 1929. At its Karachi Session it drew up a programme of social and economic order to which it pledged itself. It steadfastly kept its gaol—national independence—before it and refused to be side-tracked into minor issues in the provinces and at the centre. Its official instrument for this policy remained confined, now to non-co-operation, now to civil disobedience. This was, however, a negative programme to be used from time to time against the government of the day. A constructive programme of social and economic reform was also adopted mainly with a view to substantiate the principles underlying the Karachi programme. The advent of a labour Government to power in England in 1929 led to a truce between the Congress and the British Government in India. The Congress was invited to send its delegates to the second session of the Round Table Conference in London. But before the session could meet the Labour Government had given place to the "National" (Conservative,) Government in England! The Indian representatives to the Round Table Conference had hardly reached India when the truce between the Congress and the Indian Government was brought to an end and once again the Indian prisons were filled by members of the Indian National Congress.

In the formal elaboration of the proposals that finally resulted in the Government of India Act, 1935, the Congress took no part. But its activities formed the main drive at the back of the British decision to part with power in India. Unfortunately it had unnecessarily raised certain premature issues in India which became the official excuse for some of the worst features of "the special responsibilities" of the Governors and the Governor-General in India.

The Government of India Act, 1935, threatened a split in its ranks. The "whole hoggers" wanted to eschew the new constitution and devote themselves to the "constructive programme." The parliamentarians were tired of the barren toil

outside the government portals. They further saw clearly that some of the defects of the Act could be easily removed by a sitting-in strike—by refusing to work it in the way the British Government had intended it should be worked, and by not letting others work it in that fashion. As the question of national independence for India had not yet been solved, it made that an election cry in all the provinces in the elections held to the first provincial legislatures in India. Newly enfranchised masses gladly responded to this call. In the United Provinces, Bihar, Orissa, Madras, Bombay and Central Provinces it secured an overwhelming majority in the legislature. It formed the biggest single party in the North West Frontier Province and Assam. Only in three provinces were non-Congress majorities returned. By refusing to accept office in the six provinces it secured a modification of the Constitution Act by convention. Soon in eight provinces the Congress became His Majesty's Government. As the question of the federal government had not yet been satisfactorily settled, it still continued to be the opposition in the central legislature. With full parliamentary institutions working at the centre and the provinces such a situation would have easily liquidated itself by canvassing for popular support in the elections. But the central government was autocratic. Friction between such a central government and the now autonomous governments of the provinces was certain. It came finally on the outbreak of hostilities between England and Germany. An irresponsible central executive acquired the right of superseding popular liberties on account of the war. There could be no compromise now between the position of the Congress as the Opposition at the centre and His Majesty's Government in the eight provinces. Two things were incompatible. Elsewhere the war brought about "National (comprehensive all-parties)" government, in India any such move was unimaginable for its prosaic administrators. The Congress ministers resigned power in eight provinces.

The soundness of its position was demonstrated when Sir Stafford Cripps announced, on behalf of the British Government, its willingness to concede national independence to Inida, dropping all claims to reservation of power in British hands in the interest of certain interests. There was a possibility of the Congress joining in the formation of a National Government at the centre and probably in the provinces when the negotiations broke down on the question of transfer of complete political power to India.

The Indian National Congress was the party of "National independence" till 1947. It defined its political creed in the Karachi resolution on basic rights of citizens. It functioned in eight provinces as His Majesty's Government for two years. But most other political parties shared with it its passion for national independence. Most other parties in India agreed with it on its basic conception of urgent political problems. When it was in office, the best that non-Congress provincial governments could say about their measures was that they were very much like the Congress programme.

Thus neither its demand for national independence nor its social or economic programme made it 'a group of persons possessing opinions distinguishing them from the rest of the community.' They formed the biggest single group consistenly working for that ideal and possessing a large number of members who had proved their earnestness for it by cheerfully undergoing voluntary suffering. Its ideal being the country's ideal, its political programme the common programme of the country, the Congress claimed that it was the country. Such confusion of thought can be easily understood when we remember that the voice of the electorate made it the only alternative government at the centre and His Majesty's Government in eight out of eleven provinces in India. Under a democratic dispensation it would have been His Majesty's

Government of India entitled to speak for the whole country just as other majority parties did elsewhere.

Some critics found its devotion to the democratic ideals only knee-deep and accused it of dictatorial tendencies. This was hardly fair. No other party in the world held its elections so frequently, in none others was membership so broad-bottomed. That it had a High Command only proved that it believed in functioning effectively and supervising thoroughly its far-flung membership. That from time to time it entrusted the supreme direction of its affairs to one man is not surprising. Every democratic political party has utilised leadership. The Congress proved its essentially democratic nature by repudiating this personal leadership from time to time even in matters dearest to the leader's heart. That there were dictatorial tendencies at work among the Congress members need not be denied; but they were there in spite of its democratic ideals and organization and not because of it.

The Congress won the second elections in the 7 provinces in 1946 and was installed in office again in eight provinces. It adopted politicians of all complexions as its candidates for election to the Constituent Assembly, thus ensuring an agreed upon constitution for the country. In August 1947, it formed the first independent government of India under Pandit Jawaharlal Nehru, but once again demonstrated its farsightedness by giving office to politicians of all shades in the government. It sponsored the formation of a National Trade Union Congress to wean the labour in India from communism. The withdrawal of the Socialists threatened to be a staggering blow to its hold on the masses, but it has survived it successfully wherever elections for local bodies have been held, though in Bombay corporation it lost many seats to the Socialists.

There is also the Liberal Party under an All India Liberal Federation. It has a very small following in the country. It has not much vocal public opinion to support it. It inlcudes

some of the clearest brains in the country and some of the sharpest intellects. Yet its hatred of direct action even in the form of non-co-operation, its pathetic clinging to the British sense of fairplay, its failure to put forward any effective device for securing national independence, condemned it to a life of barren toil. It is possible, however, that it may get a new lease of life now that the vital question of national independence has been solved.

There was the Hindu Mahasabha, agreeing with the Congress in its demand for national independence, but deriving its strength mainly from the aggressiveness of the Muslim League. Unlike the latter it has taken a share in forming a ministry in Bengal. It did not put up many candidates at the last general election, and as most of the Hindu electors voted Congress its electoral support was very small. It possesses neither an elaborate constitution nor a broad-bottomed membership.

The Justice Party began as a Non-Brahmin Party and came to power in Madras under dyarchy. In the elections to the provincial legislatures in 1937 it lost heavily to the Congress. It provided in Madras an interim minority minister on 1st April, 1937, and functioned as the Opposition when the Congress was in office. It is difficult to define its policy in provincial affairs as anything more substantial than the promotion of Non-Brahmin interests.

The Krishak Praja Party in Bengal fought the election in 1937 and formed the first coalition ministry. Its leader however, soon became a prominent Muslim Leaguer. But the Party was kept in existence by some of his former lieutenants who now went into the opposition. It became the Ministerialist party when Mr. Fazl Haque formed a coalition with the Congress and the Hindu Maha Sabha. Like the Unionist Party in the Punjab, it represented rural interests.

But unlike the Unionist Party, its rural bias made it pro-tenant and anti-landlord.

The Akali Party is mainly a pressure group intent upon securing advantages for the Sikhs. It has neither a political programme in provincial politics nor any definite views of its own on all India questions.

The Radical Democratic party has so far functioned outside the legislatures mainly. It has not yet been able to capture seats in any legislature. It served as an instrument for keeping up the morale of the labour during the War through the Labour Federation dominated by it. Some of the members of the Communist Party functioned for some time as a wing of the Congress Party. A rift came born primarily of the attitude of the two bodies towards the war after the Russians' entry into it. It was accused by the Congress Party of anti-Congress and anti-National activities between 1942-45 and driven out of the Congress. It has acquired a hold on the Trade Union Congress and now functions as an independent party after the usual communist fashion.

The Congress Socialists remained within the Congress till recently. They broke away from it in 1947. Like the Labour Party in England, they favour socialism, parliamentary government and individual liberty and demand a speedier programme of nationalization of industries as well as a swifter disappearance of the princely order.

It is only when elections to legislatures will be held under the new constitution that real political divisions of the country will become visible. Real division is only possible when there is agreement on fundamentals among all parties. It is hoped that most of the basic problems of constitution will get solved by then leaving the ground clear for differences on political problems.

CHAPTER XXXI

THE NEW CONSTITUTION OF INDIA

The Constituent Assembly has been busy framing a constitution for India. A draft was submitted to the President of the Assembly on 21st February, 1948, and has been considered by the various provincial legislatures. It lays down directive principles of state policy, assures fundamental rights of citizenship, makes special provisions for minorities besides providing for the general framework of government. With these exceptions, it follows the framework provided by the Government of India Act 1935. It clings to the word Union used by the Cripps Mission as a general description of the government of the country and as at present drafted makes an attempt at setting up a hybrid government deriving its main characteristics from various—and some times poles apart—constitutions of the world.

The executive head of the Union is the President of India elected by an electoral College consisting of members of the houses of Parliament and of the lower houses of the provincial legislatures. A very elaborate arrangement has been made to provide first that the value of the votes of the members of the provincial legislature will vary according to the population of the units and secondly that the total value for this election of the votes cast by members of Parliament is the same as the total value of the votes cast by the members of all the provincial legislatures. The president holds office for five years and may resign sooner. He may be removed from office for violation of the constitution by impeachment carried by two-thirds of members of both houses of Parliament meeting separately. A President can be re-elected only once. In the case of a

vacancy in the office of the President, the Vice-President, elected by both Houses of parliament meeting in a joint session, acts.

The Vice-President is not a member of the legislature, though he is ex-officio chairman of the Council of State. He holds office for five years but may be removed sooner for incapacity or want of confidence in him by a resolution passed by two-thirds of members of the Council of State and approved by a similar resolution of the House of the People.

The President exercises the prerogative of mercy for offences tried by courts martial or under laws of Parliament, and in all cases where an offender has been sentenced to death.

A Council of Ministers aids and advises the President in the exercise of his functions. The Prime Minister is at the head of the Council of Ministers. The Council is jointly responsible to the House of the People and must thus consist of members belonging to the party which has a majority in that House. All ministers must be members of either House of Parliament or become members within six months of entering upon office. The Prime Minister communicates to the President all decisions of the Council of Ministers and all projects of legislations and furnishes any additional information the President may call for. The President may require the Prime Minister to consider in the Council collectively any order of a minister which has not been so considered yet.

The President may promulgate an Ordinance on any Union subject when Parliament is not in session. Such an Ordinance is laid before Parliament and ceases to be operative six weeks after the reassembly of Parliament if not approved earlier.

The President nominates the Governors of the states, appoints the Attorney General of the Union, the judges of the Supreme Courts and of High Courts, the members of the Commission appointed to investigate a complaint by one State

about interference in its use of water resources by another state of the Union, of States Tribunal, of an Inter-States Commerce Commission, Finance Commission and of the Union Public Service Commission.

The President may issue a proclamation of emergency when he considers that the security of India is threatened by war or by domestic violence. Such a proclamation suspends the fundamental rights of the citizens during the emergency and six months after its termination and enables the Union Government to exercise all the functions of government, federal as well as local.

The Union Government has charge of the defence of India, including industries necessary for the purposes of defence or for the prosecution of war and arms and explosives, foreign affairs (including customs, extra-territorial jurisdiction, fishing beyond territorial waters, immigration, and port quarantines), posts and telegraphs, telephones, wireless and broadcasting, airways, national high ways and national water-ways, major ports, railways, scientific surveys including census operations, the Reserve Bank of India, currency and exchange, banking and insurance, stock exchange and future market, trade corporations, patents and copyrights, weights and measures, opium for export, labour in mines and oil fields and salt. It has been alloted adequate financial resources in the shape of customs, income tax, succession and estate duties, duties on property other than agricultural lands, corporation tax, terminal taxes on goods and passengers and excise duties. The Union shares with the states authority for criminal law, civil and criminal procedure, transfer of property, trust and trustees, contracts, learned professions, newspapers and printing presses, boilers, motor vehicles, factories, labour welfare, electricity, shipping and navigation on inland waterways, and economic and social planning. An attempt has been made to make the two lists fool proof to

minimise friction. The sphere allowed to the Union Government is fairly extensive. The residuary powers lie in Parliament. The Union Government administers the central territories and there exercises all the functions of government.

The Union Parliament consists of a Council of State and a House of the People. The first has 250 members, 15 nominated by the President and 235 elected by the Provincial legislature or its lower chambers where there are two houses. The House of the People consists of 500 members, elected by territorial constituencies and each representing not less than 500,000 nor more than 750,000 citizens. Every citizen over 21 has a vote. The President may appoint two Anglo-Indians to the House of the People if he holds that they are not properly represented in the House. Seats are reserved for Harijans and Indian Christians in Bombay and Madras. Members of the House of the People remain in office five years from their first meeting. If dissolution becomes due during an emergency, the life of the House can be extended by a period of a year at a time, so as to avoid elections during the emergency and six months thereafter. Members of all legislatures must be 21 years of age. No undischarged insolvent, no man certified by a competent court as of unsound mind, no one owing allegiance or adherence to a foreign power, or enjoying the rights and privileges of a subject or a citizen of a foreign power can stand for election and sit in the legislature. Public servants cannot stand for election.

Members enjoy freedom of speech in the house. No action can be taken against them for any report of their speeches nor votes in the house. Till their privileges are otherwise determined, they enjoy all the privileges and immunities of the members of English Parliament. They cannot thus be arrested except for treason and felony when the legislature is in session.

Members of the legislature receive salaries and allowances at the present rates in various legislatures.

Money bills originate in the House of the People. Having been passed there, they are transmitted to the Council of State. The Council can send back a measure with its amendments to the House within thirty days of its receipt. If the House agrees to the amendments proposed, the bill as amended is considered to have been passed by both the Houses. If the House does not agree to the amendments proposed, the bill is considered to have been passed in the form in which it was originally passed by the House. The Speaker of the House sends every money bill to the Council with his certificate.

A bill after its passage in both the houses is presented to the President for his assent. The President may assent to it, or may, within six months of its presentation to him, return it to the legislature for its reconsideration with or without any amendment or refuse his assent. A bill becomes an Act when assented to by the President. A money bill can be introduced in the House only by the government.

The estimates of receipts and expenditure for the year are laid before both houses of Parliament. Expenditure charged on revenue can be discussed, though not voted upon, by the House. The rest of the expenditure is submitted to the House in the form of demand for grants. The House may refuse a demand, reduce it or assent to it in its entirety. The salaries of the President, Chairman and Deputy Chairman of the Council, Speaker and Deputy Speaker of the House and Judges of the Supreme Court and debt charges are thus not subject to an annual votes of the House. Excess demands for services already provided for and supplementary demands for new services are similarly dealt with. The demands for grants can only be moved by a member of the government.

Both the houses transact business under the rules in force at present to be replaced by their own rules in time. Rules of procedure for joint sittings may be made by the President. The Speaker presides at a joint sitting.

Hindi and English are the official languages of Parliament. But the presiding officer may permit a member to address the house in his mother tongue if he cannot adequately express himself either in English or Hindi. Summaries of such speeches in English or Hindi may be made available to the members of the legislature when the presiding officer thinks it necessary.

A Supreme Court consisting of a Chief Justice and not less than seven associate judges will be set up as the highest judicial court in India. All the judges are appointed by the President and hold office till 65 years of age. A judge can be removed sooner by the order of the President passed after the two houses have, separately by a two third majority of the members voting, requested him to do so on account of the judge's misbehaviour or incapacity. A judge may resign his office sooner. A judge of the Supreme Court is not authorised to appear in any court in India after his retirement, resignation or removal.

The Supreme Court has original jurisdiction in all disputes between the government of the Union and of any of the states, between one state or group of states and another and between the Government of India and one state or group of states on one side and another state or group of states on the other.

Appeals lie to the Supreme Court from any judgment or order of a High Court if the High Court certifies that such a judgment or order involves a substantial question of law as to the interpretation of the constitution. The Supreme Court.may grant special leave to appeal if a High Court refuses to grant a certificate . Appeals in the Supreme Court are decided on all questions of fact or law raised in the lower court or raised for the first time in the Supreme Court.

The Court also hears civil appeals from the decision of a High Court if the value of the subject matter of dispute is not

less than Rs. 20,000. Even in such an appeal, it may be urged that some provision of the constitution has been wrongly interpreted by the lower court.

The Court may grant special leave to appeal from the decision of any court in India.

A High Court may refer to the Supreme Court for opinion a question of the interpretation of any law of Parliament or of a state other than the one in which the High Court has jurisdiction. The Supreme Court may, on the application of any of the parties, require a High Court to send such a case for its opinion if the High Court refuses to do so.

Parliament may confer jurisdiction on the Supreme Court with respect to a subject which the Government of the Union and that of a state agrees is a fit subject for such decision. Jurisdiction in a federal subject may similarly be granted to the Supreme Court.

The Supreme Court may further be authorised by Parliament to issue writs of correction, prohibition and *Habeas Corpus*.

The Supreme Court may be asked to give its opinion on any question of public importance by the President.

Five judges form a quorum on constitutional questions. All decisions of the court will be arrived at with the concurrence of a majority of judges. Judgment is delivered in open court.

The President appoints an Attorney-General of India who can take part in the proceedings of the Legislature.

The President appoints an Auditor-General who holds office till he is 65 years of age. He may be removed by the President when requested to do so by two-thirds of members of the legislature for misbehaviour or incapacity. After his retirement he cannot hold any public office.

The president and members of the Public Service Commission for the Union are appointed by the President. The

president of the Commission is ineligible for any job or public office after retirement. The President may appoint a Commission on scheduled areas and castes after ten years and may sooner appoint another Commission on the socially and educationally backward classes and areas. Their reports when received are laid before Parliament. The Union can give directions to the provincial governments with regard to the administration of the scheduled areas.

The President nominates the Governor of every state of the Union. The Governor holds office for five years and may be re-appointed but once thereafter. He may be sooner removed as a result of his impeachment for violation of the Constitution. Proceedings for impeachment start if two thirds of the members of the provincial assembly support such a motion. The charges are heard by a committee appointed by the Council of States for the purpose. The Governor is subject to removal only, if after the investigation, the Council of States, by two thirds of the total members, decides that the charges against the Governor have been sustained.

The Governor exercises the prerogative of mercy in cases involving the contravention of the laws of the state.

The administration of a state is carried on by a Council of Ministers with a Chief Minister at their head. The ministers are appointed by the Governor and hold office during his pleasure. Every minister must be a member of the legislature or become one before the expiry of six months from his first entering upon office.

The relations between the Governor and his Chief Minister are almost the same as between the President and the Prime Minister.

A state may have one house of legislature or may have two houses. The lower house is called Legislative Assembly and the upper house, the Legislative Council. All the members of the Legislative Assembly are elected. Seats are reserved for

Muslims, Harijans, Indian Christians in Madras and Bombay and for Tribal districts in Assam. The Governor may however nominate a member or members to represent Anglo-Indians if he considers their representation in the legislature inadequate.

The total number of the members is not less than 60 and not more than 300, distributed among single member territorial constituencies having about 100,000 inhabitants, as ascertained in the last census report. A provincial assembly, unless sooner dissolved, continues for five years from the date of its first meeting. Members must be at least twenty five years of age. They are elected by adult suffrage.

The Legislative Councils consist of not more than 25 per cent of the members in the Legislative Assembly. One sixth of the members are nominated by the Governor, one third elected by the Assembly by single transferrable vote and one half elected by five electoral colleges consisting (A) of persons eminent in (a) literature, art and science, (b) agriculture, (c) engineering and architecture, (d) public administration and social services and (B) representatives of university or universities in the state.

Each panel contains twice the number to be elected from the panel. One third of the members of the Council retires every third year. Members must be at least 30 years of age.

The legislature meets at least twice a year with intervals of not more than six months' duration. The Governor summons the legislature, prorogues it and dissolves the Legislative Assembly. The Governor may address the legislature or send any messages for its consideration. At the commencement of a session, the Governor outlines the programme of the session before the legislature in his address.

Ministers and the Advocate General may address the house even when a minister is not a member of the house. They cannot however record their votes on any motion.

The Assembly at its first session elects a Speaker and a

Deputy Speaker. The Speaker holds office for five years or till the next assembly meets. A Speaker or Deputy Speaker may be removed from his office for incapacity or want of confidence by a resolution passed by two thirds of the members of the house.

If the office of the Speaker becomes vacant the duties of the Speaker are performed by the Deputy Speaker. If both offices are vacant then a person nominated by the Governor performs such duties. But during the absence of the Speaker or the Deputy Speaker from the Assembly, a member of the panels of chairmen appointed by the Speaker presides.

The tenure of office of the Chairman and the Deputy Chairman of the Legislative Council is the same as that of the Speaker.

Ten members or 1/6 of the total membership of the house, whichever greater, form a quorum. The presiding officer votes only in case of a tie.

A member vacates his seat if he is absent without permission for more than sixty days while the house is in session or stands adjourned for not more than four consecutive days.

Members of the legislature enjoy the same privileges and immunities and are subject to the same disqualifications as members of Parliament.

The procedure for business in the provincial legislature is the same as in Parliament.

Like the President, the Governor, when the Legislature is not in session, may issue an Ordinance on a provincial subject and with the previous consent of the Governor-General on a concurrent subject. As in the Union, the Ordinance ceases to be operative six weeks after the reassembly of the legislature.

A provision of very doubtful value reproduces the gubernatorial government of Section 93 of the Government of India Act. If a grave emergency makes it impossible to carry on government in accordance with the provision of the constitution, the

Governor may declare that a grave emergency has arisen. The proclamation declaring a state of emergency is submitted to the Governor-General for such action as he may deem necessary in the circumstances. Emergency government by a Governor lasts only for a maximum period of two weeks.

The High Courts of East Punjab and those at Calcutta, Patna, Allahabad, Nagpur, Madras and Bombay are courts of record, of original jurisdiction and of appeal. The Chief Justice and the judges of every High Court are appointed by the President who also fixes the total number of judges. The judges retire when 65 years of age and are not permitted to practise before any court after retirement. They can be removed for incapacity or misbehaviour just as the judges of the Supreme Court. The Chief justice receives a salary of not less than Rs. 4,000 and associate judges not less than Rs. 3,500. The President may appoint additional judges when the state of business before the court warrants it and may appoint a temporary judge in a vacancy.

The High Courts sit in appeal on all the inferior courts. A High Court may issue writs of *habeas corpus*, of warning, and of correction and may provide any remedy in law or equity.

A High Court may transfer, if it thinks necessary, a case pending in a lower court and transfer all cases involving interpretation of the constitution.

A High Court may serve more than one state. It has power of superintendence and guidance over all inferior courts. The local legislature may set up a new High Court in a state. Parliament may extend the existing jurisdiction of a High Court or exclude such jurisdiction as a High Court exercises in a state different from the one in which it is situated. But the local legislature cannot increase, restrict and abolish the jurisdiction of a High Court in the state in which a High Court is situated.

The accounts of a state are audited by a provincial auditor

or by the Auditor General. A state may pass a law empowering its government to appoint a provincial Auditor-in-chief. Such an Act shall come into operation three years after its publication in the Gazette after receiving the assent of the Governor. The audited accounts of every state are placed before the Governor with the report of the Auditor General or the Auditor-in-Chief thereon. The Governor causes the report to be considered by the legislature.

The Union has a Public Service Commission and there are Public Services Commissions in every province. The president and members of the union Commission are appointed by the President, those of the provincial Commissions by the Governor. The chairman of the union Commission cannot accept any public office on retirement. The chairman of the provincial Commissions are only eligible for appointment as members of the Union Public Services Commission. Members of the provincial Commission can accept public appointment after retirement only with the approval of the President in the Union and that of the Governor if the appointment is in a province.

While keeping in view the efficiency of the public services, an endeavour is made to appoint members of every community to public office. For the first two years the percentage of new appointments given to Anglo-Indians in the railway, telegraph, customs and postal departments will be the same as just before the emergence of the Dominion of India. After every succeeding two years the reservation will be reduced by ten percent and after ten years it shall entirely disappear. The Union and the states shall make for the first three years the same educational grants to the Anglo-Indians as they were receiving in the year ending March 31, 1948. The sum shall decrease by ten percent of the previous trienium every succeeding period of three years but shall cease to be paid at concession rates at the end of ten years. At least forty per cent of the seats in

these institutions shall be reserved for students of other communities for the first ten years.

The Governors appoint special officers for minorities in every state to investigate all matters relating to safeguards provided for minorities in the constitution. The special officer also reports to the Governor on the working of these safeguards at such intervals as the Governor may direct. All these reports are laid before the provincial legislature.

There is a Tribes Advisory Council in Madras, Bombay, Bengal, Central Provinces and Orissa consisting of not less than ten and not more than 25 members. Three fourths of these shall be elected representatives of the local scheduled tribes in the Assembly of the state. It will advise the Governor on the welfare of scheduled tribes and scheduled areas in the province. In the Scheduled Areas Advisory Committee in the U. P., two thirds of the members are elected representatives of these tribes. The Scheduled Areas Advisory Committee in the Punjab consists of two thirds of the members residing in the areas. In Assam there are separate district and regional councils.

Citizens have been assured certain fundamental rights. The draft constitution assures citizens equality of opportunity and equal rights to various public offices. The right to freedom of speech and expression, to assemble peaceably and without arms, to move freely, to reside and settle and acquire property throughout the Union and to practise any profession and carry on any occupation, trade or business and to form unions and associations are also assured. The exercise of these rights is however subject to their being curtailed in the interest of the general public, public order, morality and health by the state. During an emergency proclaimed either by the Governor or the Governor-General, the rights stand automatically suspended.

This constitution shall be amended on the initiative of either house of Parliament. The amending bill shall require for its

passage, an absolute majority of the totality of members of the house with at least two thirds of the members voting. It shall then be presented to the President for his assent. If he gives his assent the constitution stands modified after the Act has been published in the official Gazette. But if an amendment disturbs the division of subjects between the Union and the units, increases or decreases the representation given to the states in Parliament, or affects the power of the Supreme Court, the further approval of one half of the Governors' provinces and one third of the acceding states shall be necessary before the amendment will become operative. The representation granted to Muslims, Indian Christians, Scheduled Castes and scheduled tribes shall not be disturbed for another ten years.

India has thus been made a federal state. The division of functions by the constitution places the states and the union governments at a par within the sphere exclusively assigned to each. The Union Government occupies a higher position with regard to the concurrent subjects where both the states and the Union exercise authority. The Union Government, as the government of the entire country, possesses a certain overriding authority. It nominates the Governors of the states and it sets up tribunals for the settlement of disputes about water.

It looks as if by the time the first elections are held, India would be divided into some 46 units. East Punjab, the United Provinces, Bihar, Orissa, Bengal, Assam, Andhra, Kerala, Tamil Nad, Karnatak, Maharashtra, Gujarat and Maha-vidarbha would probably represent the present nine provinces. Ajmer, and Delhi would be, as before, under the Union Government but with local legislative organs of their own representing glorified municipal corporations. The French and Portuguese settlements, if they merge into the Union, may form another two units directly under the Union Government or be merged in the neighbouring provinces. Himachal Pradesh and Cutch would be two additional Lieutenant Governorships

with fairly extensive territories and possessing elected legislatures. If no agreement is possible in Bombay and Madras, both of these cities may form another two centrally administered units as major ports. East Punjab States, Mastyapradesh, Rajasthan, Saurashtra, Vindhya Pradesh, Madhya Bharat unions of states would form another group of six units nearer in constitutional status to province than to princely states. Hyderabad, Baroda, Mysore, Cochin, Travancore, Jodhpur, Bikaner, Jaisalmer, Jaipur, Tripera, Khasi, Tehri Gharwal, Manipur, and Coach Bihar and Bhopal would probably form the fifteen states of the Union with Instruments of Accession defining their relations with the Union rather than the Constitution. Kashmir may join the Union a little later on. It is expected that Rampur and Benares may merge into the United Provinces. This would give us 13 provinces, 6 unions of states, and 15 states as 35 units of the Union with 9 (and possibly 11) centrally administered tracts.

The centrally administerial tracts may in course of time emerge into full units of the Union.

Government in the units would be parliamentary of the English type. The disappearance of special constituencies would make the representation in the legislature entirely territorial and hence popular. Adult suffrage would give every adult, subject to residence qualification as in England and elsewhere, the right to vote and make India the biggest democracy in the world. All electorates would be general though seats have been reserved for Harijans, backward areas and tribes, Muslims (for the next ten years only) and Sikhs in the Punjab. The Union as a federation will have two houses of the legislature, a Council of States and a House of the People. Most of the units will have only one house

The constitution lays down directives of state policy which define the working principles of the state in India. These will make India a socialist state where every citizen would ulti-

mately enjoy the right to work, to education, to public assistance, and to a living wage. The fundamental rights guaranteed cover property, religion, culture, education and equality of citizenship and unrestricted approach to courts for enforcing freedom of speech, press and of association.

Danger to the state from organized violence has been provided against by authorising the Governor to take over the government of a unit into his hands for a fortnight with the approval of the Governor-General. The Governor-General can provide similarly against grave emergency. The draft does not provide for the immediate summoning of the legislature in an emergency but before the constitution is finally enacted it may remove that defect.

India would thus become the most populous democratic state in the world when the constitution goes into force.

SELECT BIBLIOGRAPHY

1. Administration of the East India Company—*Kaye.*
2. East India Company—*Philips.*
3. India in 1858—*Mills.*
4. Indian Polity—*Chesney.*
5. Indian Administration—*Stratchey.*
6. India in 1880—*Temple.*
7. Imperial Gazetteer, first four volumes—*Hunter.*
8. Government of India—*Curzon.*
9. Native States of India—*Lee Warner.*
10. Indian States and the Government of India—*Pannikar.*
11. Development of Self-Government in India—*Cross.*
12. Nationalism and Reforms in India—*Roy Smith.*
13. Report on Indian Constitutional Reforms—*Montagu and Chelmsford.*
14. Report of the (Simon) Statutory Commission on India.
15. Report of the (Butler) Committee on Indian States.
16. Report of the (Muddiman) Committee.
17. Government of India Acts, 1915, 1916, 1919, 1935.
18. Reports of the Joint Select Committees on the Government of India Bills of 1919 and 1935.
19. Indian Constitution—*Sapru.*
20. Indian Constitution and its Actual Working—*Bannerji.*
21. A Constitutional History of India—*Archibold Constable.*
22. A Constitutional History of India—*Punniah.*
23. A Constitutional History of India—*Keith.*
24. Landmarks in the Constitutional and National Development of India—*G. N. Singh.*
25. Report of the Aitchison Commission on Public Services in India.

26. Report of the Decentralization Commission on India.
27. Report of the (Lee) Commission on Superior Services in India.
28. Courts and Legislative Authorities in India—*Cowell.*
29. The Political System of British India—*Horne.*
30. Dyarchy—*Curtis.*
31. Dyarchy in Practice—*Appodaran.*
32. Indian Constitutional Documents—*P. Mukerji.*
33. Speeches and Documents on Indian Policy—*Keith.*
34. Cabinet Mission in India—*Bannerji.*
35. Cripps Mission in India—*Coupland.*
36. The Viceroy and Governor General of India—*Rudra.*
37. Indian Office—*Setton.*
38. Independence of India Act, 1947.
39. Draft Constitution of India.
40. Government of India—*Sri Ram Sharma.*
41. Democracy in the Saddle—*Sri Ram Sharma.*
42. Proceedings of the Round Table Conference on India.
43. Federal Court Reports.
44. Constitutional Problem in India—*Coupland.*
45. Constitution Crisis in India—*Munshi.*
46. Government of India—A Historical Introduction—*Ilbert.*
47. Constitutional Manuals published by the Provincial Govts.
48. Proceedings of the Indian Legislative Assembly, 1921 to 1947.
49. Proceedings of the Imperial Legislative Council, 1862 to 1921.
50. Proceedings of the Provincial Legislative Assemblies and Councils.
51. Administrative System of British India—*Ghosh.*

CHRONOLOGICAL SUMMARY

1600 London Merchants get a charter securing to them the monopoly of trade with the East Indies, they form a company.

1622 The Company authorised to punish its servants for criminal offences.

1624 The Company authorized to apply 'martial law' to its officers and other ranks.

1668 Bombay transferred to the Company for £10 a year.

1676 Company authorized to mint coins at Bombay.

1683 Company begins exercising admiralty jurisdiction.

1685 Bombay becomes the headquarters of the Company.

1688 Company to exercise full sovereign rights at Bombay.

1698 A new English Company granted the right to trade with East Indies.

1702 The United East India Company.

1726 Existing English laws introduced in Company's factories in India. Presidents and Councils in India to make law by regulations subject to the approval of the directors, Mayor's Courts set up in Bombay, Madras and Calcutta.

1754 Presidents and Councils authorized to set up courts-martial.

1756 Loss of Calcutta.

1757 The Company to acquire and cede territory, Company's servants assume the duty of defending Bengal.

1765 The Company takes over civil government and collection of revenues in Bengal, Bihar and Orissa.

1773 Regulating Act, collegiate government of presidencies, a Governor-General of Bengal, and four councillors, diplomacy and defence and war in Bombay and Mad-

ras placed under Bengal, a royal Supreme Court at Calcutta exercising authority over public servants, law making by regulations registered in the Supreme Court.

1780 Declaratory Act. Collectors of revenue and judicial officers of the Company placed beyond the jurisdiction of the Supreme Court.

1783 Impey recalled for impeachment.

1784 Pitt's India Act, direction of Indian affairs by the British ministry, only three members of the Council, Governor-General and Governors to exercise casting vote, direction of diplomacy and prosecution of war effectively placed under Bengal.

1786 Enquiry leading to Warren Hastings' impeachment. Board of revenue set up in Madras, Cornwallis appointed Governor-General, and Commander-in-Chief, vested with the power to override his council except in law, justice and taxation.

1790 Capitation charges for raising British troops for service under the Company.

1793 Heads of presidency governments given the right to override their councils except in law, taxation and justice, C-in-C to be a member of council if appointed, cost of Board of Control and East India House placed on Indian estimates, Indians excluded from jobs worth £500 or above now reserved for Company's regular servants.

Administration of criminal justice in Bengal taken over by the Company, G.-G. and Council to function as the Sadar Nizamat Adalat (Supreme Court of Criminal Appeals.)

Separation of collectorate and judiciary by Cornwallis, city and Zilla Courts, four provincial courts, two courts of final appeals (civil and criminal), salaries

of civil servants raised, Indians relegated to the lowest ministerial jobs.

1796 Recorders' Courts displace Mayors' Courts in Madras and Bombay.

1800 Supreme Court at Madras.

1800 College at Fort William for training company's servants.

1801 Judges appointed to Sadar Diwani and Sadar Nizamat Adalats.

1807 Governor in Council of Madras authorized to make regulations.

1811 Senior Judges of the Sadar Adalats designated chief justices.

1813 Company's monopoly of trade in India abolished, provision for Christian religion, right to levy customs and raise taxes confirmed.

1820 Volunteer Infantry (European) Corps.

1823 Salaries and pensions of additional troops in India, of chaplains and of the judges of the Supreme Court charged to India.

1824 Supreme Court in Bombay.

1827 Codification and revision of civil and criminal justice in Bombay.

Sadar Fojdari Adalat set up, circuit court for appeals.

1828 Amended English criminal law extended to India.

1829 Commissioners of revenue displace circuit courts in Bengal.

1831 Appellate civil and criminal courts for Oudh.

1831 Indian Civil Judges.

1832 Emergence of district and session judges, non-official justices of the peace, non-Christian jurors.

1833 Centralization of administration, Government of India composed of a Governor-General of India and Council set up, one treasury, one law making body (G. G. and Council and a barrister law member), Indian

Acts to cover all places and things, all courts, all persons in British India and company's servants in allied India, Indian laws not to affect British laws concerning allegiance, sessions public, discussion oral, select committees on bills, government of India authorized to suspend single members or entire governments of Bombay or Madras, all subjects of the crown in India (theoretically) eligible to all public offices, Law Commission to codify laws, dividend of the Company charged to India, Board of Control to have two assistant commissioners and a president, secretary of the Board to sit in Parliament if elected.

1834 Combination of judicial and executive functions, appointment of Indians as magistrates.

1834 Persian ceased to be the court language, vernaculars take its place in lower courts and English elsewhere.

1835 Government of India supports English education, freedom of the press.

1836 A Lieutenant-Governor for the North-Western Province appointed, Indian courts and judges given jurisdiction over Europeans in civil suits.

1837 Indian deputy-collectors.

1841 No assistant commissioners appointed to the Board of Control.

1843 Indian deputy-magistrates.

1853 Chief Commissionership of the Punjab.

1853 Nizam cedes Berar to the Company.

1853 East India Company to govern India till bought out at double the face value of the Indian stock through a sinking fund created out of Indian revenues, President of the Board to receive £5,000, directors reduced to 18, 6 to be nominated by the Crown, 12 out of 18 to have Indian experience of at least ten years, quorum of ten, Secret Committee, three sub-committees of di-

rectors, appointments to councils subject to President's approval ; Government of India to consist of four members, two senior civilians, one army officer and one barrister, C.-in-C. extraordinary member ; dual Governments of India when G.-G. on tour, G.-G. and President and Council ; a 'petty Parliament' in India for making of laws consisting of the Government of India, one legislative councillor from every presidency, Chief Justice of the Supreme Court, one Judge of the Supreme Court.

1854 A Lieutenant-Governor for Bengal to be appointed. Government of India to administer territories directly (through Chief Commissions), G. G. in C. to define boundaries of provinces, competitive civil service for India starts.

1854 Wood's Despatch on Education.

1857 Mutiny ; Universities at Calcutta, Bombay and Madras founded.

1858 Transfer of the government to the Crown. Secretary of State for India, India Council of 15 permanent servants, 8 nominated by the Crown, 7 elected by the directors (subsequent vacancies to be filled by the India Council) to hold office during good behaviour and removable by crown on a joint address, to sanction Indian estimates, to define conditions of public service and to hear service appeals and perform such other functions as Secretary assigns to it, Secretary to spend 1/5 of total Indian revenue in England for Indian purposes, military cadets to be nominated by the Secretary and India Council, auditor of home accounts, Governor-General to appoint Lieutenant-Governors, naval and military forces of the company transferred to the crown.

1861 Company's European forces merged into the regular Bri-

tish Army. Indian Civil Services Act reserves all important civil (scheduled) appointments to statutory civilians but gives power to appoint others with the approval of the Secretary of State.

Indian Councils Act institutes a government of India consisting of a Governor-General and five ordinary councillors, C.-in-C. extra-ordinary member, work divided among members, each in-charge of a single department, authority and influence of members increased, G.-G.'s supremacy over government increased and made more effective, dual government of India, President and Council at Calcutta and G.-G. on tour, Legislative functions of Bombay and Madras restored, local bills subject to Governor's and G.-G.'s assent, additional legislative members (4 to 8) appointed including non-official Indians for two years.

Indian Legislative Council consisting of G.-G., C.-in-C., head of the local administration, five ordinary members of the Council and from 6 to 12 additional legislative members appointed for 2 years, one half-non-official, to make laws for the whole of India on Indian and local subjects subject to the G.-G.'s assent, temporary Ordinance by G.-G.

Indian High Courts Act sets up High Courts at Calcutta, Bombay and Madras with original and appellate jurisdiction of the Supreme Courts and Sadar Adalats consisting of a Chief Justice, puisne judges and additional judges not exceeding 15 in all, with power to superintend lower courts and with at least five barrister judges (including the Chief justice) and five civilian judges.

1861 The Central Provinces under a Chief Commissioner.

1862 Legislative Council in Bengal set up, Lieutenant-Governor in the Punjab.

1865 High Courts to have jurisdiction over British subjects and Indian Christians in Indian States, G.-G. in C. to define their territorial jurisdiction.

1866. High Court at Allahabad.

1869 Secretary of State to fill all vacancies in Indian Council, members to hold office for ten years, Crown to appoint members of councils in India, central legislature to make laws for Indians anywhere in the world.

1870 Secretary of State empowered to demarcate by resolution 'Backward tracts' in India, appointments of statutory civilians authorized, Governor-General empowered to override council in taxation.

1870 Mayo's scheme for decentralization of finance.

1872 Code of Criminal Procedure; Europeans in India to be tried by European session judges or justices of the peace.

1874 A sixth member (for Public Works) added to the Government of India.

1875 Demand for Swarajya in the *Satyartha Prakasha* by Swami Dayanand.

1876 Appointment of members to India Council during good behaviour permitted, H. S. Maine appointed.

1877 Queen becomes Empress of India, further decentralization of finance.

1878 Vernacular Press Act.

1879 Rules for the appointment of Statutory civilians made.

1882 University of the Punjab, Ripon's resolution on local self-government, Ilbert Bill introduced.

1882 Vernacular Press Act repealed, decentralization of finance completed, emergence of divided heads of revenue.

1883 Ilbert Act conceded trial of European cirminals by Session Judges and European jurors.

1884 Royal Indian Marine placed under the Government of India.

1885 Foundation of the Indian National Congress.
1886 Legislative Council in North Western Province.
1888 University of Allahabad.
1887 Report of Public Service Commission.
1892 Provincial (administrative) service set up, 1/6 of vacancies in scheduled appointments in 1879 set apart for its senior members.
1892 Indian Councils Act ; members permitted to ask questions and discuss annual financial statement, number of members raised, non-official Indians admitted through veiled election, local councils permitted with the previous sanction of Governor-General to amend and repeal central Acts affecting them.
1893 Commanders-in-Chief of Madras and Bombay ceased to exist, unified command of the Indian army.
1897 Legislative Council set up in the Punjab.
1903 Berar added to the Central Provinces.
1904 Sixth membership for Public Works made general. New member placed in charge of commerce.
1905 Partition of Bengal, boycott and swadeshi movement, revolutionary activities in Bengal, Swarajya defined as the goal of Indian aspiration in Calcutta Congress.
1909 Commander-in-Chief becomes member for Army, a member for Labour and Industries added in place of the military member.
Morley-Minto Reforms, Legislative Councils permitted to discuss resolutions on administration and financial statement, supplementary questions, councils enlarged, 60 additional members in the Imperial Legislative Council, from 20 to 50 in Provincial Councils, indirect election, weightage given to Muslims, Communal representation.
An Indian appointed to G.-G.'s Council, two appointed to India Council. Newspapers Act.

1910 Press Act.

1912 Partition of Bengal annulled, Bengal reunited, Assam and Bihar and Orissa separated, executive and legislative Councils in Bihar. Capital moved to Delhi.

1914 Congress demand for a declaration of the goal of British policy in India.

1916 Congress-League Pact and scheme for reforms.

1917 Mesopotamia Commission Report, declaration of August 20 defining responsible government as the goal of British policy.

1918 Montagu-Chelmsford Report on India Constitutional reforms. King's Commission granted to an Indian from the ranks, resolution on local self-government.

1919 Government of India Act, 1919, High Commissioner for India in London, delegation by Secretary of State to Indian authorities, fiscal convention, Auditor-General for India, three Indians in Executive Council, two chambers at the centre, permanent Council of State with 26 elected members (1/5 renewed every year) and 34 nominated, Assembly of 140, 16 officials, 100 elected directly, motions for adjournment, open supplementaries, partial voting of grants, legislation by certification and Ordinances, restoration of cuts, authorization of expenditure, federal public service commission, public accounts committee, standing committees, Diarchy in provinces, Governor in Council, Governor and ministers, enlarged provincial assemblies, working of ministeries, motions of no confidence or adjournment, open supplementaries, voting of votable grants for transferred and reserved subjects, restoration of cuts in reserved subjects, authorization of expenditure in transferred, Ordinances.

1921 Reforms of 1919 introduced, Chamber of Princes.

1923 Eight units scheme for Indianization of the Army.

1925 Report of Muddiman Committee on Reforms.
1926 Skeen Committee.
1927 Simon Commission.
1928 Report of All Parties Conference on reforms.
1929 Dominion Status defined as the goal of British Policy, demand for complete independence by the Congress.
1930 Report of the Simon Commission, first Round Table Conference, federation, provincial autonomy and safeguards, Butler Committee Report.
1932 Macdonald announcement on representation of minorities, modified by Poona Pact.
Indian Military Academy, Dehra Dun.
1935/37 Government of India Act, India Council abolished, Parliamentary interest in provincial subjects surrendered, equitable share of expenses of India Office by Britain, Federal Court, Crown Representative, provincial autonomy, new dyarchy, special responsibilities of the Governor acting in his discretion or his judgment, assurances given, constitutional governors, Federation abortive.
1939 Outbreak of the War, resignation of Congress ministers, Governors' rule in C.P., U.P., Bombay, Madras, Bihar.
1940 National War Council.
1940 First expansion of the G.-G.'s Council.
1942 Cripp's Mission, independence after the War, breakdown, of negotiations on national government.
1946 Cabinet Mission plan, elections to provincial and imperial legislatures.
1947 Constituent Assembly.
1947 Partition, Dominion of India.
1948 Draft Constitution of India.